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THE LAW OF AND PRACTICE IN LUNACY

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WITH THE

LUNACY ACTS 1890-91 (CONSOLIDATED AND ANNOTATED): THE RULES OF THE LUNACY COMMISSIONERS 1895: THE IDIOTS ACT 1886: THE VACATING OF SEATS ACT 1886: THE RULES IN LUNACY 1892-93 (CONSOLIDATED): THE LANCASHIRE COUNTY (ASYLUMS AND OTHER POWERS) ACT 1891: THE INEBRIATES ACTS 1879 AND 1888 (CONSOLIDATED AND ANNOTATED): THE CRIMINAL LUNATICS ACTS 1800-1884: THE RULES IN MACNAUGHTON'S CASE: AND A COLLECTION OF FORMS, PRECEDENTS, ETC.

BY

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SIR RICHARD EVERARD WEBSTER, G.C.M.G., Q.C., M.P.

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THIS WORK

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(BY PERMISSION)

RESPECTFULLY DEDICATED

PREFACE

In spite of the great and growing importance of the subject, no writer on the English Law of Lunacy has, so far as I am aware, hitherto attempted at once to cover the whole field with which it deals, and to combine a systematic treatment of it with a practical annotation of the numerous statutes in which it is so largely embodied.

The present work is an attempt to realise both of these objects.

The plan adopted has been as follows. After a brief introduction, in which the legal terminology of insanity and the legal test of lunacy are discussed, several branches of lunacy law which are almost entirely independent of statute,—namely, Insanity and Contract, Insanity in Relation to Marriage, the Wills of Lunatics, Insanity and Tort, and Insanity and Life Insurance—have been excepted for separate treatment. Here, as also in dealing with the criminal responsibility of the insane, I have made copious use of Scotch and American authorities.

These chapters constitute Part I. of the book.

Part II. deals with Lunacy dependent on Statute. This portion of the work is subdivided into Lunacy in its Civil, and Lunacy in its Criminal, Relations. The former includes the Lunacy Acts 1890 and 1891, consolidated and annotated—the type being so arranged that the repealed portions of the Act of 1890 and the additions or alterations effected by the Act of 1891 can be seen at a glance—the Rules of the Commissioners in Lunacy 1895, the Idiots Act 1886, and the Vacating of Seats Act 1886.

The Rules in Lunacy 1892-93 have been fully dealt with in

the body of the work, and it has, therefore, been thought sufficient to throw the complete text of them into the Appendix.

Under the latter heading, namely, Lunacy in its Criminal Relations, the Criminal Lunatics Acts 1800 to 1884 and the Rules in Macnaughton's Case are discussed.

Part III. consists of an Appendix of (A) Statutes, (B) Rules, Circulars, etc., (C) Forms and Precedents, and (D) a few Addenda, and a few miscellaneous matters of importance, arranged alphabetically, for which, owing to the plan of the treatise, it was difficult to find a place in the body of the work.

The statutes which it has been thought advisable to insert in this part of the work are the Statute *de Praerogativâ Regis*, the Marriage of Lunatics Act 1811, which although often treated as repealed, is still in force, the Lunacy Act 1891, the Lancashire County (Lunatic Asylums and other Powers) Act 1891, and the Inebriates Acts 1879 and 1888, which have been consolidated and annotated.

Without attempting to rival the valuable collection of Forms contained in Elmer, I have given a complete set of ordinary precedents of practical everyday importance.

In this connection I desire to acknowledge the great kindness of Sir James Crichton Browne, one of the Lord Chancellor's Visitors in Lunacy, Mr. G. Harold Urmson, one of the Legal Commissioners in Lunacy, and Mr. Hardinge F. Giffard, Secretary to the Commissioners in Lunacy, who have most courteously given me information, in regard to their respective departments, for which I applied to them. I have also a similar indebtedness to acknowledge to Mr. Short of the Crown Office, Mr. E. J. Hunt of the Office of the Masters in Lunacy, and Mr. Hutton, Town Clerk of Preston.

I am obliged to Dr. Yellowlees of the Royal Asylum, Glasgow, and to Dr. Conolly Norman, Medical Superintendent of the Richmond District Asylum, Dublin, and one of the Editors of the *Journal of Mental Science*, for valuable statements—which are inserted in the text—of the practical administration of Scotch and Irish Lunacy Law respectively. My friend, Mr. D. M. Kerly, of the Inner Temple, has very kindly undertaken the heavy task of

revising the proofs of this work, and to him I am indebted for numerous suggestions and much invaluable assistance.

My friend, Mr. J. Arthur Price, of Lincoln's Inn, has been good enough to revise all the sections of the Lunacy Acts dealing with the powers of the Judge in Lunacy, and has also given me material help with reference to the note on Prescription and Limitation. In all those parts of the work which relate to local authorities and justices, I have derived the utmost aid from the weekly notes and queries in the *Justice of the Peace.*

I am fully sensible of the many shortcomings and defects of this work, but I trust that it may prove of some service to the Legal and Medical Professions, as well as to other classes in the community who are interested, either theoretically or practically, in the administration of the Lunacy Law.

A. W. R.

1 Garden Court, Temple, E.C.
November 1896.

ERRATA.

At p. 60, note 5, for *re H. W. Strachan*, 1895, 1 Q.B. 439, *read* 1 Ch. 439.

At p. 83, line 3 from the top, *for* 1 & 2 Geo. IV. c. 38, *read* 1 & 2 Geo. IV. c. 33.

At p. 87, line 2 from the top, *for* 1893, *read* 1895.

At p. 642, note 1, for *Clapham* read *Shipham.*

At p. 804, line 6 from the bottom, *for* "guilty but acquitted on the ground of insanity," *read* "guilty but insane."

At p. 811, second marginal note from the top, *for* "after prisoner has pleaded," *read* "before prisoner has pleaded."

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INTRODUCTION

Psychological and pathological characteristics of insanity.

An analysis in detail of the psychological and pathological characteristics of insanity would be out of place in a treatise on the law of lunacy. In so far as these characteristics come into contact with, and throw light upon, the development and present position of the law, they shall be dealt with incidentally.

But there are two subjects which meet the student of English lunacy law, not only on the threshold, but at every subsequent stage, of his inquiries; and of these some preliminary discussion is necessary. We refer to (1) the chief legal terms respecting persons under mental disabilities, and (2) the legal test of lunacy.

1. *The Chief Legal Terms respecting Persons under Mental Disabilities.*

Legal terminology.

This question may be dealt with shortly, for—as will appear immediately—the test by which the law in modern times has come to determine both the civil capacity and the criminal responsibility of persons suffering from any form of mental disease has stripped it of much of its old importance.

Why less important than formerly.

The term *non compos mentis*,[1] which means, of course, "not master of his senses," is at least as old as the statute *de Praerogativâ Regis* (17 Ed. II. cc. 9 and 10), and is used sometimes—as in that statute[2]—as indicating a species contrasted with idiots; sometimes, as by Coke,[3] who was not however

Non compos mentis.

[1] *Furiosus, non sanae mentis*, and *fatuus* are used in Bracton, fol. 420; and Fleta vi. 40, fol. 434; in Britton, fol. 167, we have *sot* and *hors son sens.*

[2] Where *fatui naturales* are contradistinguished to *non compotes mentis sicut quidam sunt per lucida intervalla*, and cp. Fitz. N.B. fol. 233, 256 D, Staund. de Pr. Reg. 34-36, and Co. Litt. 246 (b).

[3] *Beverley's case*, Jac. I., 4 Rep. 124, Co. Litt. 247 (a). The analyses of the different forms of insanity by Coke and Hale are classic, and may conveniently be quoted here, although they are incidentally referred to elsewhere *passim*. Coke says (4 Rep. 124 (b) and cp. Litt. 247) that there are four kinds of *non compos*—(1) idiot or fool natural; (2) he who was of good and

Coke's classification.

consistent in the matter,[1] as a genus, and afterwards, chiefly in statutes[2] relating to the insane, either in the same generic sense or in connection with the terms "idiot" and "lunatic" with the force of *ejusdem generis.*[3]

Idiot.

The word "idiot"—the Greek ἴδιος, a private person, one who has not any public office, and ἰδιώτης, Latin *idiota,* an ignorant and illiterate person—appears in the statute *de Praerogativâ Regis* (17 Ed. II. cc. 9 and 10) as *fatuus naturalis,* where it is placed in contradistinction to *non compos mentis,* which Coke treats as both a species and a genus (*v. sup.*). The idiot is defined by Coke[4] as one "who from his nativity, by a perpetual infirmity, is *non compos mentis,*" and by Hale[5] as "fatuity *a nativitate vel dementia naturalis.*"

Criteria of idiocy.

Fitzherbert's test.

Swinburne's test.

The legal criteria of idiocy changed as the nature of the disease and the possibility of treating it became better understood. Fitzherbert's test[6] was the capacity of the alleged idiot to count twenty pence, or tell his age or who were his father and mother. Swinburne[7] suggested, *inter alia,* capacity to measure a yard of cloth, or rightly name the days in the week.

Hale's view.

Hale[8] put such suggestions on their only defensible basis as "evidences," and added that "they are too narrow, and conclude not always, for idiocy or not is a question of fact triable by jury and sometimes by inspection."

Probable modern view.

While the term idiocy has not undergone the changes which

sound memory, and by the visitation of God, or by sickness, grief, and other accident has lost it; (3) *lunaticus qui gaudet lucidis intervallis,* and sometimes is of good and sound memory, and sometimes *non compos mentis*; (4) by his own act, as a drunkard.

Hale's classification.

Hale (1 P.C. 29) adopts the following classification: (1) *dementia naturalis,* or *a nativitate,* idiocy or fatuity; (2) *dementia accidentalis,* or *adventitia* (a) *quoad hoc vel illud,* or (b) total; and again permanent or fixed (phrensy); or intermittent (lunacy), subdivisible according to its danger and activity into *furor, rabies, mania* on the one hand, and deep delirium and stupor on the other; (3) *dementia affectata,* drunkenness.

[1] Co. Litt. 246 (b).

[2] 23 Eliz. c. 3, sec. 3; 21 Jac. I. c. 16, sec. 3; 4 Geo. II. c. 10; 26 Geo. II. c. 33, sec. 12; 4 Geo. IV. c. 76, sec. 17.

[3] In *ex parte Barnsley,* 1744, 3 Atk. 173, Lord Hardwicke attributed the use of the term *non compos mentis* in the Courts and in Acts of Parliament to the fact that it had a "determinate signification" importing "a total deprivation of sense"; and cp. *Leving* v. *Caverly,* 1704, Pr. Ch. 229; *Bennet* v. *Vade,* 1742, 2 Atk. 325; *Lord Donegal's case,* 1751-2, 2 Ves. 407; and see as to extension of jurisdiction in lunacy, sec. 116 of Lunacy Act 1890, *post.* As we have seen, however, *non compos mentis* had not this "determinate signification," and its use, or the use of its equivalent "unsound mind" (cp. 6 Geo. IV. c. 74, 16 & 17 Vict. c. 70, Lunacy Act 1890, sec. 341, *post*) in conjunction with idiot and lunatic supports the view stated in the text.

[4] *Beverley's case,* 1 Jac. I. 4 Rep. 124.

[5] 1 P.C. 29.

[6] N.B. 233, and cp. Staund. Pr. Reg. 34.

[7] Testaments, 69.

[8] 1 P.C. 29, and cp. *Ball* v. *Mannin* in 1829, per Lord Tenterden, C.J., 1 Dow & C.R. 392; *Lord Ely's case,* 1764, 1 Ridg. P.C. 522; and *Prodgers* v. *Frazier,* 36 Car. II., 3 Mod. 43.

have passed over the terms lunacy and unsoundness of mind, and still imports incapacity, there can be little question that the question whether a man is an idiot or not would be determined to some extent in doubtful cases by a standard similar to that which is now applied in regard to lunacy, viz. his capacity with reference to the particular matter or class of matters which brings his mental condition *sub judice*.

Deaf, and blind and deaf mutes.

While there is no direct authority for this proposition, it is indirectly corroborated by what has taken place in regard to deaf, and blind and deaf, mutes, who are in law presumed to be idiots,[1] but the presumption may be rebutted in the case of either of those classes.[2]

The term "lunatic" includes idiot for the purposes of the Lunacy Act 1890. (See sec. 341 of that statute, *post*; *aliter* in the Idiots Act 1886, *post*.)

Lunatic.

The term lunatic—"coined in more ignorant times"[3] from the Latin *luna*, in consequence of the notion that the moon had an influence on mental disorders[4]—is not to be found in the statute *de Praerogativâ Regis* (17 Ed. II. cc. 9 and 10), nor in any form of the old writ,[5] and does not appear in the statute book till the reign of Henry VIII.[6] It is defined by Coke as a "person who has sometimes his understanding and sometimes not, *qui gaudet lucidis intervallis*, and therefore he is called *non compos mentis* so long as he has not understanding."[7] Hale[8] defines lunacy as "interpolated" (*i.e.* intermittent) *dementia accidentalis vel adventitia* whether total or *quoad hoc vel illud*. Lunacy, while existent, necessarily imported incapacity.[9]

Origin of term.

Definition. Coke.

Hale.

Modern meaning.

In modern times *lunacy* has lost its old precise signification. It would probably include the second class of *non compotes* specified by Coke,[10] viz. "a person who was of good and sound

[1] Co. Litt. 42 (b).

[2] *Elyot's case*, 18 Car. II. Carter 53; *Ruston's case*, 1786, Leach C.C. 408; *Dickenson* v. *Blisset*, 1754, 1 Dick. 268. These decisions relate to deaf mutes alone; but the *ratio decidendi*, viz. the capacity of such persons to receive instruction, covers the case of deaf and blind mutes also.

[3] Per Lord Hardwicke, L.C., in *ex parte Barnsley*, 1744, 2 Atk., at p. 174. Another explanation of the origin of the term has been suggested, viz. the enjoyment of *lucid* intervals by lunatics.

[4] Cp. Hale, P.C. 31, and Tuke's Dict. of Psychol. Med. tit. *Moon*. Probably the injurious effect on patients of the sleeplessness engendered by bright moonlight may have given rise to the notion in question.

[5] Reg. Brev. 266; 14 Ves. 450 n. (11). The word for lunatic in several other languages has the same etymology. Cp. Italian *lunatico*, Spanish *alunado*, Greek σεληνιακός (epileptic), German *mondsüchtig*.

[6] Cp. 33 Hen. VIII. c. 20.

[7] Co. Litt. 247 (a); 4 Rep. 124.

[8] 1 P.C. 29; permanent or fixed *dementia accidentalis* he defines as *phrensy*.

[9] It is to this element in the earlier meaning of lunacy that such phrases as "the contract of a lunatic is void" are attributable.

[10] Co. Litt. 247 (a); 4 Rep. 124.

memory, and by sickness, grief, or other accident wholly loses his memory and understanding." It is employed in a number of statutes in the most confused and confusing manner, sometimes as a general term,[1] sometimes in contradistinction to idiots and imbeciles,[2] and once at least, viz. in the Lunacy Act 1890 (sec. 341, *post*), as including idiot, and frequently in conjunction with the words "unsound mind" and "insane,"[3] and it cannot any longer be regarded as necessarily synonymous with incapacity.

The meaning of the term lunacy is impliedly extended by sec. 116, subs. (1) of the Lunacy Act 1890, *post*, for the purpose of secs. 116-149 of that statute.

Unsound mind.

The term "unsound mind" is used in many statutes indiscriminately to signify *non compos mentis*, lunacy, and permanent "adventitious" insanity.[4] Lord Eldon[5] said that it imported a state "contradistinguished both from idiocy and from lunacy and yet such as to justify a commission." It does not now necessarily import incapacity.[6]

Imbecility of mind.

Imbecility of mind is weakness "between the limits of absolute idiocy on the one hand and of perfect capacity on the other."[7] *Semble* that "imbecility" would, for the purposes of that part of the Act of 1890 which relates to management and administration, fall within sec. 116, subs. (1) (*d*) of that statute, *post*, as incapacity, "through mental infirmity arising from disease." Lunatic does not, however, include imbecile for the purpose of the Idiots Act 1886. (See sec. 17 of that Act, *post*.)

As to partial insanity, see *post* p. 36, and Part II., Rules in *Macnaughton's case*.

As to moral insanity, see *post* p. 55, and Part II., Rules in *Macnaughton's case*.

As to lucid interval, see *post* pp. 33, 53, 55.

As to delusion, see *post* pp. 38, 54.

[1] 1 & 2 Geo. IV. c. 15; 8 & 9 Vict. c. 100; 16 & 17 Vict. c. 96; 16 & 17 Vict. c. 97. "Insane" is used in 39 & 40 Geo. III. c. 94; 2 & 3 Vict. c. 51, sec. 5; 3 & 4 Vict. c. 54; 5 & 6 Vict. c. 29, sec. 23; 6 & 7 Vict. c. 26, sec. 21.

[2] 49 & 50 Vict. c. 25.

[3] 43 Geo. III. c. 75; 5 & 6 Vict. c. 22, sec. 14; 7 & 8 Vict. c. 101; 8 & 9 Vict. c. 100, sec. 114; 16 & 17 Vict. c. 70, sec. 2; 24 & 25 Vict. c. 134.

[4] *Lord Ely's case*, 1 Ridg. P.C. 518; 39 & 40 Geo. III. c. 94; 43 Geo. III. c. 75; 6 Geo. IV. c. 74; 7 Geo. IV. c. 57, sec. 73; and *v. sup.*, p. 1, note 3.

[5] *re Portsmouth*, 1815, Shelf. Lun. 5. "Non sane memory" in the Irish Act, 7 Geo. II. c. 14, has a similar signification, *Carew* v. *Johnston*, 1805, 2 Sch. & Lef. 280. A similar meaning was attached to unsoundness of mind in *Wallis* v. *Luhring*, 1893, 34 Ind. 231.

[6] See *post* p. 6, note 2, and p. 25; and see *Reg.* v. *Shaw*, 1868, L.R., 1 C.C.R. 145, cited in note to sec. 98, subs. (2), *post*.

[7] Per Sir John Nicholl in *Ingram* v. *Wyatt*, 1828, 1 Hagg. E.R. at p. 401.

2. *The Legal Test of Lunacy.*[1]

Legal test of lunacy.

A radical change has passed over the old law as to the criteria of capacity and responsibility in mental disease during recent years.

Testamentary capacity, and capacity to marry.

1. The law as to the testamentary capacity of the insane, and the law as to their capacity to enter into the contract of marriage, have had practically the same history, and may therefore be considered together.[2] In each of these departments we find three, and the same three, stages of development. At first, the question of capacity is treated solely as a question of fact, to be determined according to the ordinary rules of evidence.[3] Then there comes an intermediate and metaphysical period, coincident in each case with a great advance in medical knowledge, and inspired by the idea—which was formulated as a definite external standard,—that, the mind being one and indivisible, and insanity being a disease of the mind, any derangement of the faculties must be fatal to civil capacity.[4] In recent years, however, the Courts have reverted to the old criterion, and each case of disputed capacity is once more decided upon its own merits, just as if the disturbing dicta in *Waring* v. *Waring*[5] had never been promulgated.

Question of fact.

Metaphysical period.

Modern test.

Contracts.

2. The law as to the capacity of the insane to enter into other contracts than that of marriage has had a curious and extremely complicated history, which it is hardly possible to write without error.[6] Starting with the maxim of the Roman law—*furiosus autem stipulari non potest*[7]—which soon became unsuited to a highly developed mercantile community such as ours, it turns aside, although not with a very clear or certain current of authorities, towards the doctrine of Coke, that a man cannot be allowed to plead his own incapacity,[8] and then wanders along through a number of exceptions and distinctions—"matters of record" and "matter in pais," "contracts executed," and "contracts executory"[9]—till it is arrested by the decision in *Molton* v. *Camroux*,[10] afterwards expanded by the decision of the Court of Appeal in *Imperial Loan Co.* v. *Stone*.[11] At first sight nothing could seem more unpromising than an effort to trace any

Civil law.

Coke's view.

Exceptions to.

Molton v. *Camroux.*

Imperial Loan Co. v. *Stone.*

[1] As to legal test of idiocy, see *ante* p. 3. This part of the introduction appeared in substance in the *Law Quar. Rev.* July 1890.

[2] See *post* pp. 17 and 32.

[3] See *post* pp. 19 and 32.

[4] See *post* pp. 19 and 36.

[5] 1848, 6 Moo. P.C. 341.

[6] See *post* pp. 3-16.

[7] See *post* p. 8.

[8] See *post* p. 9.

[9] See *post* pp. 11, 12.

[10] 1848, 2 Ex. 487, 4 Ex. 17.

[11] 1892, 1 Q.B. 599, *post* p. 12.

movement towards a simple test of capacity in a department of law whose course hitherto has been so much impeded by its history. But we shall find (1) that the historical difficulties above referred to chiefly arise from the uncertain and shifting meanings of the terms lunacy and unsoundness of mind;[1] (2) that it has nowhere been decided in recent years that the mere existence of mental disease vitiates contractual capacity;[2] and (3) that in the law of contract, as in the law testamentary and in the law of marriage, no man is counted a lunatic unless he is incapable of appreciating the nature, and of passing a rational judgment upon the results, of the particular act which is the subject of judicial consideration.[3]

Criminal responsibility.

3. Can the law of criminal responsibility in mental disease be fairly subjected to a similar analysis? It is not proposed to dwell here upon the vagaries of its history—how "the wild beast theory" of Mr. Justice Tracy yielded to "the general right and wrong theory" of Sir James Mansfield, which was in turn supplanted by "the rules in Macnaughton's case,"[4] nor to rehearse the well-known criticisms on "the rules" which are associated with the names of Sir James Stephen and Dr. Henry Maudsley.[5] The

Modern test.

question is, what standard of criminal responsibility is *now* applied in cases of alleged unsoundness of mind? Owing to the absence of any adequate provision in our law for the review of criminal cases by a Court of Appeal, we have no authoritative judgment upon the subject to set side by side with such elaborate "opinions" as that of Judge Somerville in *Parsons* v. *The State*.[6] But "the rules in Macnaughton's case" are, avowedly, manipulated by Judges,[7] in order that injustice may not be done to the innumerable prisoners whose mental disease refuses to conform to any of the orthodox types which alone are nominally recognised

Inebriety.

by English law. Even the inebriate, the *voluntarius daemon* of Coke, who formerly had "no privilege thereby, but what hurt or ill soever he doeth, his drunkenesse doth aggravate it," is now held to come within the meaning of the rules in Macnaughton's case, and to be irresponsible if he did not know the nature and quality of his acts.[8] Loss of self-control, resulting from any

[1] See *ante* pp. 3 and 4.

[2] On the contrary see *Jenkins* v. *Morris*, 1880, 14 Ch.D. 674; and see *post* p. 12, note 3.

[3] A similar criterion is applied to the capacity of the insane to give evidence, see notes to sec. 322 of the Lunacy Act 1890; and as to torts, see *post* p. 65.

[4] See *post* Part II. ii.

[5] See *post* Part II. ii.

[6] 1887, 81 Ala. 577.

[7] See a striking instance of this recorded by Lord Blackburn, *post* Part II. ii.

[8] Cp. the language attributed to Mr. Justice Day in *Reg.* v. *Baines*, Lancaster Assizes, *The Times*, 25th January 1886;

disease of the mind, is in practice coming more and more to be regarded as a valid exculpatory plea; and the abrupt question, *Could he help it?* in which Lord Bramwell is popularly supposed [1] to have left to the jury the determination of the sanity or insanity of Dove, though at variance with the theory of the criminal law, will soon accurately represent the spirit of its administration.

These considerations diminish the force of the criticism, which does such frequent duty in medical treatises, that the law has different and conflicting tests of lunacy. The verbal forms of the test of lunacy must necessarily differ according to the subject-matter to which they are applied. The test of capacity to make a will cannot be stated in exactly the same way as the test of capacity to marry or to give evidence, or as the test of criminal responsibility. But there is a steady approximation towards the only uniform test of lunacy which is desirable or possible, viz. "Was the person whose act is in question able to understand its nature, and to pass a fairly rational judgment on its consequences to himself and others; and was he a free agent so far as that act was concerned?" [2]

Are there different "tests" of lunacy?

also a scholarly paper on "Medical and Legal Preventives for Dipsomania," by Professor Gairdner of Glasgow (*Birmingham Medical Review*, Jan. 1890). This subject is discussed *post* Part II. ii.

[1] See *post* Part II. ii.

[2] The test applied in the case of suicide in its relation to life insurance is an exception to the rule stated in the text, see *post* p. 67. But the judicial dissentients from the present doctrine are of such high authority that it would probably be brought into line if an opportunity for revising it arose.

PART I

LUNACY INDEPENDENT OF STATUTE

CHAPTER I

INSANITY AND CONTRACT

Contracts of insane.

THE law as to the contracts of the insane is pre-eminently a subject that requires to be approached from the historical side.[1] Not only has it passed through a remarkable and interesting course of development, but many of the cases which are still cited, and properly cited, in support of the position to which it has now attained, cannot be understood unless the place which they occupy in the growth of the law is clearly appreciated. It is proposed therefore, in spite of the degree of repetition which the method involves, first to consider the development of the law as to insanity and contract, and then to state the existing law and practice.

Method of treatment.

(*a*) Historical development of law.

(*b*) Statement of law and practice.

(*a*) HISTORICAL DEVELOPMENT OF THE LAW.

The law of England as to the capacity of lunatics[2] to contract has had an extremely irregular and complicated development.

First rule based on civil law.

The first rule on the subject was based on the civil law,[3] and was thus compendiously described in the Institutes:[4] *Furiosus nullum negotium gerere potest quia non intellegit quod agit.*[5]

[1] A similar observation applies to, and a similar method of treatment has been adopted in the case of insanity and marriage and of the wills of lunatics. Chaps. ii. and iii., *post* pp. 17 and 32.

[2] *Mutato nomine*, the statements in the text apply to drunkenness equally with insanity.

[3] Cp. Inst. 3, tit. 19, s. 8; Dig. 50, tit. 17, s. 143; Gaius 3, s. 106; Puffendorf iii. c. 6, s. 3 (Barbeyrac, note 1); Grotius, *De jure belli et pacis*, lib. 2, c. 11, s. 5.

[4] *Ubi sup.*

[5] Bract. 3, 2, 8; Fleta 2, 56, 19; Britt. 1, 29, 6. Acts done by a lunatic so found since the time from which his lunacy was declared to have commenced might be avoided—Fitz. N.B. 106; *Leach* v. *Thompson*, 9 Will. III. Lord Raym. 313, reported as *Leach* v. *Thompson*, 1 Show. P.C. 150, 4 Rep. 126-7, 8 Rep. 170 (a); Co. Litt. 247 (a); 3 Bac. Abr. tit. Idiots and Lunatics, C. & F.; *re Humpleby*, 1829, Shelf. Lun. 344,—unless they were proved to have been done in a lucid interval, 4 Rep. 125 (a).

First exception, matters of record.

An exception to this rule was, however, made in favour of certain matters of record, *e.g.* fines and recoveries,[1] statutes, recognisances, etc.,[2] partly because of the solemnity of these acts, and partly because of the importance, from the point of view both of the dignity of the Courts and of the administration of justice, of not permitting judicial records to be called in question.

Limitations. Recovery by attorney.

Limitations were in turn grafted upon the exception of matters of record. If a lunatic suffered a recovery by attorney, the recovery might be avoided.[3] Again, although no averment of idiocy or lunacy could be made against a recovery where the parties appeared in person, evidence of weakness of understanding was admitted to invalidate the deed creating the tenant to the *praecipe,* and thus the deed was set aside.[4] Moreover, fines and recoveries were not beyond the range of equitable relief.[5]

Avoidance of deed creating tenant to *praecipe.*

Equitable relief.

Second exception, no man to stultify himself.

A second exception to the original doctrine of English law as to the contracts of lunatics had special, though not exclusive, reference to deeds, feoffments, and grants.[6] It was contained in the famous rule that no man should be allowed to stultify himself by setting up his own incapacity.[7] This maxim is of great antiquity. According to Britton [8] indeed, in the time of Edward I. *non compos* was a sufficient plea to avoid a man's bond, and there is a writ in the Register for the alienor himself to recover lands aliened by him during his insanity, *dum fuit non compos mentis ut dicit.*[9]

History of maxim.

[1] 1 Ridg. P.C. 106, 276. If an idiot or lunatic was permitted to levy a fine or suffer a recovery he could declare the uses of it—10 Rep. 42 (b); Hob. 224; Winch 106; cp. *Mansfield's case,* 10 Jac. I. 12 Rep. 124; *Lewing's case,* 14 Ed. IV. 10 Rep. 42 (b); *Lister* v. *Lister,* 28 Geo. II., Barnes, 218; *Jameson* v. *Fletcher,* 1827, 2 Moo. & P. 265 n. (a); *Stead* v. *Izard,* 1805, 1 B. & P. N. R. 312; *Compton* v. *Collinson,* 1790, 1 H. Bl. 334; *Moreau's case,* 18 Geo. III. 2 Sir W. Bl. 1205; *Eliot's case,* 18 Car. II. Carter 53; *ex parte Wright,* 1683, 1 Vern. 155.

[2] Perk. s. 24, 4 Rep. 124 (a), 10 Rep. 42 (b); 2 Inst. 483, and see *post* p. 12. In *Howard* v. *Digby,* 1834, 2 Cl. & F. 661, Lord Brougham said that "a lunatic cannot be a cognisor in a statute merchant staple, a judge-warrant of attorney, or any other security." If this is to be taken as meaning that any of these matters of record could be avoided by a party to it on the ground of lunacy, it is inaccurate.

[3] *Beverley's case,* 1 Jac. I. 4 Rep. 126 (b); *Hume* v. *Burton,* 1784, 1 Ridg. P.C. 16; *Thompson* v. *Leach,* 9 Will. III. Ld. Raym. 313, see p. 8 n. (5); *Stokes* v. *Oliver,* 8 Will. III. 5 Mod. 209; *ex parte Roberts,* 1746, 3 Atk. 308; *Walcott,* 1826, 11 Moo. 307.

[4] *Wentworth* v. *Cholmley,* 1744, cit. 3 Atk. 313.

[5] *Addison* v. *Dawson,* 1711, 2 Vern. 678; *Welby* v. *Welby,* 1595, Toth. 164; *Wright* v. *Booth, ib.* 166; *Ferres* v. *Ferres,* 7 Ann. 2 Eq. Cas. Ab. 695; *Coleby* v. *Smith,* 1683, 1 Vern. 205; *Cartwright* v. *Pultney,* 1742, 2 Atk. 381; *Baker* v. *Pritchard,* 1742, *ib.* 387; *Clark* v. *Richards,* 1700, 2 Vern. 412; *Frank* v. *Mainwaring,* 1839, 2 Beav. 115.

[6] Co. Litt. 247 (a); 4 Rep. 123 (a); Shep. Touch. 289.

[7] Litt. 405; 4 Rep. 123 (b); Perk. 23. In *Ridley* v. *Ridley,* 1729, 1 Eq. Cas. Ab. 279, the rule is said to have been limited to acts done by the lunatic to the prejudice of others. See *post* p. 64.

[8] Ch. 28, fol. 66.

[9] Fol. 228, Memo Scacch., 22 Edw. I.; and see Fitz. N.B. 202.

But in the reign of Edward III. it was distinctly enunciated,[1] and in that of Henry VI. it was seriously adopted by the Judges in argument,[2] and it was twice applied in the reign of Elizabeth—once in an action of debt on a bond,[3] and again in an action upon the case against an innkeeper for loss of his guests' goods.[4]

Different reasons assigned for.

The reasoning by which this rule was supported was not uniform. At first the *blemish* inflicted upon himself by a man pleading his own incapacity was relied on.[5] Then it was urged that a man could not know on recovery what he did while he was insane.[6]

Ultimately, however, a sounder justification for it was discovered in the importance of favouring alienations as a matter of public policy.[7] The second exception, however, like the first, gradually underwent a process of relaxation. Privies in blood and representation were exempt from its operation.[8] It did not apply to the case of necessaries;[9] and the attempt made in *Beverley's case*[10] to extend it to relief in equity failed.[11]

Relaxation of maxim. Privies.

Necessaries.

Equit. Relief.

The maxim which we are considering has of course been subjected to very hostile criticism both in this country[12] and abroad,[13] and it is certainly difficult to defend on principle, although its evolution historically was not unnatural.

Second rule, distinction between total and partial incapacity.

Although the maxim that no man shall stultify himself appears to have preserved some measure of vitality till at least 1827,[14] another theory as to the contractual capacity of lunatics had in fact been adopted both at law and in equity before that date. It was to the effect that the contract of a lunatic was wholly void if he was absolutely incapable; it was merely voidable at his option if his unsoundness of mind was partial only and the other contracting party was aware of his condition.[15] The

[1] 5 Edw. III. 70; 35 Assis. Pl. 10.

[2] 39 Hen. VI. 42.

[3] *Stroud* v. *Marshall*, 37 Eliz. Cro. Eliz. 398.

[4] *Cross* v. *Andrews*, 40 Eliz. Cro. Eliz. 622.

[5] 5 Edw. III. 70; 35 Assis. Pl. 10.

[6] 39 Hen. VI. 42.

[7] Bac. Abr. Idiots and Lunatics, F.

[8] *Beverley's case*, 1 Jac. I. 4 Rep. 124 (b).

[9] *Bagster* v. *Portsmouth*, 1826, 7 Dow. and Ry. 618; and cp. *Manby* v. *Scott*, 1659, 1 Sid. 109, where it was said that an idiot, like an infant, was bound by a contract for necessaries for his household. But see *Brown* v. *Joddrell*, 1827, 3 C. & P. 30.

[10] See note 8.

[11] Cp. *A.-G.* v. *Parkhurst*, 20 Car. II. 1 Ch. Cas. 112; *Ridley* v. *Ridley*, 1729, 1 Eq. Cas. Ab. 279.

[12] 1 Fonbl. Eq. 1, 2, 1; *Thompson* v. *Leach*, 2 Will. & M. 3 Mod. 301, per Lord Holt.

[13] 1 Story Eq. 225.

[14] *Brown* v. *Joddrell*, 1827, 3 C. & P. 30; and see Sug. Powers, 604-5.

[15] *Yates* v. *Boen*, 12 Geo. II. 2 Str. 1104; *Faulder* v. *Silk*, 1811, 3 Camp. 126; *Pitt* v. *Smith*, 1811, 3 Camp. 33; *Cole* v. *Robins*, 2 Ann. B.N.P. 168; *Cooke* v. *Clayworth* (intoxication), 1810, 18 Ves. 12; *Gore* v. *Gibson* (intoxication), 1845, 13 M. & W. 623; and see 9 Jur. 142 (n). Cp. the Scotch cases of *Jardine* v. *Elliot*, 1803, Hume 684; *Hunter* v. *Stevenson*, 1804, *ib.* 686.

former part of this rule rested on the absence of the consenting mind (and possibly the necessary presence of "notice") in cases of absolute incapacity; the latter forms part of the law as to fraud and undue influence.

Third rule, *Molton* v. *Camroux.*

The case of *Molton* v. *Camroux*,[1] decided in the Court of Exchequer in 1848, and in the Exchequer Chamber in 1849, established a third rule as to the contracts of lunatics, although it was foreshadowed both by previous decisions at common law,[2] and by the rule laid down in *Niell* v. *Morley*,[3] that a court of equity will not interfere to set aside the contract of a lunatic, if fair and without notice, especially where the parties cannot be reinstated. The rule in *Molton* v. *Camroux*[1] is that where a person apparently of sound mind, and not known by the other contracting party to be otherwise, enters into a contract which is fair and *bonâ fide* executed and completed, and the property which is the subject-matter of the contract cannot be restored so as to put the parties *in statu quo*, such contract cannot afterwards be set aside either by the alleged lunatic or by those who represent him. In this case a lunatic had purchased certain annuities for his life of a society which at the time had no knowledge of his unsoundness of mind, the transaction being in the ordinary course of business, and fair and *bonâ fide* on the part of the society. It was held both by the Court of Exchequer and, on appeal, by the Exchequer Chamber, on the principle above stated, that after the death of the lunatic his personal representatives could not recover the premiums paid for the annuities.

In the case of *Beavan* v. *M'Donnell*,[4] the principle of *Molton* v. *Camroux*[1] was applied in a case where a lunatic had paid a deposit on the purchase of real estate.

Two important glosses have been added to the judgment in *Molton* v. *Camroux*.[1]

Matthews v. *Baxter.*

Void or voidable?

In the case of *Matthews* v. *Baxter*[5] the question was raised whether the contract of an intoxicated person (or lunatic, see *ante* p. 8, note 2) was void or only voidable. An answer in favour of the latter alternative was implicitly involved in *Molton* v. *Camroux*;[1] but the existence of the second rule, to which we have already referred, and in particular the use of the word "void," in *Gore* v. *Gibson*[6] had left the matter open to doubt. In *Matthews* v. *Baxter*,[5] however, the issue was whether the contract of a man

[1] 1848, 2 Ex. 487; 1849, 4 Ex. 17.
[2] *Dane* v. *Kirkwall*, 1838, 8 C. & P. 679.
[3] 1804, 9 Ves. 478.
[4] 1854, 9 Ex. 309.
[5] 1873, L.R., 8 Ex. 132.
[6] 1845, 13 M. & W. 623.

too drunk to know what he was about was capable of ratification. The Court of Exchequer held that it was only voidable at his option, and was therefore capable of being ratified.

Imperial Loan Co. v. *Stone.*

Burden of proof.

In the case of the *Imperial Loan Co.* v. *Stone*[1] the Court of Appeal held that where a defendant in an action of contract sets up the defence that he was insane when the contract was made, he must, in order to succeed in this defence, show that at the time of the contract his insanity was known to the plaintiff. Lord Esher's judgment went further than those of Lords Justices Fry and Lopes in expressly stating (1) that the rule applied whether the contract was executed or executory,[2] and (2) that the defendant must prove that he was not only insane, but so insane as not to know what he was about.[3]

In any event, this case settles the question of the burden of proof, and if Lord Esher's views are to be adopted (and they were not dissented from by the other members of the Court), it extends the rule laid down in *Molton* v. *Camroux*[4] in the particulars above noted.

(*b*) Statement of Law and Practice.

It may be convenient to consider the modern law and practice as to the contracts of lunatics[5] under three heads:—(1) *Matters of Record;* (2) *Contracts under Seal;* (3) *Simple Contracts.*

Matters of record.

1. *Matters of Record.*—The reasoning on which the provision in the old law (*v. ante*), that matters of record were not impeachable on the ground of insanity, depended, viz. their solemnity and the importance from the point of view both of the dignity of the courts and of the administration of justice that they should not be challenged, has lost none of its force, and it is conceived that in regard to such matters as statutes, recognisances, and statutory acknowledgments[6] the old rule would still receive considerable weight.[7]

[1] 1892, 1 Q.B. 599.

[2] His lordship pointed out that he was speaking of contracts in the ordinary sense of the word, cp. 61 L.J. Q.B. at p. 451. Whether contracts of record or under seal were meant to be excluded, or whether a distinction was being drawn between ordinary contracts and marriage is not clear.

[3] This principle had already been laid down as regards delusions. See *Jenkins* v. *Morris*, 1880, 14 Ch.D. 674, where the validity of a lease of a farm granted by a person who was at the time under an insane delusion that the farm was impregnated with sulphur was upheld. Cp. *Mitchell* v. *Kingman*, 1827, 5 Pick. 431; and as to degree of unsoundness of mind, *Ducker* v. *Whitson*, 1893, 112 N.C. 44.

[4] 1848, 2 Ex. 487; 1849, 4 Ex. 17.

[5] And intoxicated persons.

[6] As to dispensing with concurrence of lunatic husband under the Fines and Recoveries Act, see *post* p. 30. See *Elliot* v. *Ince*, 1857, 7 De G. M. & G., at. p. 486.

[7] Cp. *Foxwell* v. *Van Grutten*, 1896, 12 Times L.R., at p. 309.

2. *Contracts under Seal.*—It is submitted that the contract of a lunatic under seal is voidable[1] only if it can be shown by him, or on his behalf, that he was at the time of entering into it, to the knowledge of the other party, so insane as not to know what he was about.[2] Contracts under seal.

Although the decisions prior to the *Imperial Loan Co.* v. *Stone*[3] are conflicting, they supply some corroboration for this proposition. Thus in *Price* v. *Berrington*[4] Lord Truro seems to have thought that the principle of *Molton* v. *Camroux*[5] would apply to sales of land or mortgages. Again in *Kirkwall* v. *Flight*[6] Lord Cottenham refused to set aside a deed, executed as a security for moneys advanced, at the suit of a lunatic so found, although the defendant's counsel admitted his unsoundness of mind at the date of execution, notice being denied; and in *Campbell* v. *Hooper*[7] Stuart, V.-C., held that the simple fact of lunacy, if established, would not deprive a mortgagee without notice of all right to equitable relief. In courts of equity, too, notice was an equally material consideration.[8] Authorities. *Price* v. *Berrington.* *Kirkwall* v. *Flight.* *Campbell* v. *Hooper.*

The rule above stated does not, it appears, apply to voluntary dispositions. Thus in *Elliot* v. *Ince*[9] a lunatic tenant in tail of copyholds executed powers of attorney authorising her attorney first to procure her admission as tenant in tail in the several manors of the copyholds in question, and secondly to surrender them after admission and take a readmission to her use in fee. The act was a purely voluntary one, unsupported by any con- Exception of voluntary dispositions. *Elliot* v. *Ince.*

[1] *Molton* v. *Camroux*, 1848, 2 Ex. 487; 1849, 4 Ex. 17; *Matthews* v. *Baxter*, 1873, L.R., 8 Ex. 132.

[2] *Imperial Loan Co.* v. *Stone, ubi sup.*, and cp. *Jenkins* v. *Morris*, 1880, 14 Ch.D. 674.

[3] 1892, 1 Q.B. 599.

[4] 1851, 3 Mac. & G., at p. 498.

[5] *Ubi sup.*

[6] 1842, 3 W. R. 529.

[7] 1855, 1 Jur. N.S. at p. 672. In this case Stuart, V.-C., doubted the correctness of *Snook* v. *Watts*, 1848, 11 Beav. 105, in which Lord Langdale, M.R., seems to have taken the view that notice was immaterial, and suggested that *Jacobs* v. *Richards*, 1854, 18 Beav. 300, affirmed on appeal, 5 De G. M. & G. 55, impliedly to the same effect, must have been decided on special lines or by arrangement.

[8] *Niell* v. *Morley*, 1804, 9 Ves. 478, and cp. *Sergeson* v. *Sealey*, 1742, 2 Atk. 412, where a lunatic, before any commission was issued, and while he was apparently sane, purchased a small real estate, which was duly conveyed to him in fee; afterwards a commission issued under which he was found lunatic from a day prior to the purchase; Lord Hardwicke on a question between his real and personal representatives, would not treat the real estate as money, but allowed the legal right of the heir to prevail. *Manby* v. *Bewicke*, 1857, 3 K. & J. 342, and cp. *Hassard* v. *Smith*, 1872, I. R., 6 Eq. 429. In the Iowa case of *Edwards* v. *Davenport*, 1883, 20 Fed. Rep. 756, it was held that a contract (in this case one guaranteeing the title to lands) entered into by a person of unsound mind, is void in equity as well as at law, although the other party was ignorant of the insanity at the time of making it.

[9] 1857, 7 De G. M. & G. 475; and cp. *Clerk* v. *Clerk*, 1700, 2 Vern. 412; *Sentance* v. *Poole* (promissory note), 1827, 3 C. & P. 1; *Manning* v. *Gill*, 1872, L.R., 13 Eq. 485.

sideration. Lord Cranworth, L.C., held as against creditors of the lunatic that the entail was not barred.

Simple contracts.

3. *Simple Contracts.*—The contract of a lunatic—whether executory or executed—is voidable, not void, and is binding upon him unless he can show that at the time of making it he was to the knowledge of the other contracting party so insane as not to know what he was about.[1]

When binding.

Burden of proof.

It follows that the defence of lunacy in an action of contract will fail if the defendant does not establish both of the elements above mentioned, viz. incapacity to contract and notice, affirmatively.[2] Here, as in all other cases, the immediate burden of proof may shift from time to time, but the ultimate burden rests on the defendant.

Undue influence.

Undue influence[3] of any kind may be a ground of relief, however, where the insane contracting party is not so insane as to be incapable. Undue influence is in the case of contracts, gifts, and other transactions *inter vivos* presumed where the parties stand in certain fiduciary relations to each other, *aliter* in the case of wills. This subject is discussed in Chapter iii. Wills of Lunatics, *post* pp. 45-51.[4]

Undue influence when presumed.

Notice.

In order to constitute notice knowledge of the defendant's incapacity must be brought clearly home to the other contracting party. A casual intimation that he is out of his mind[5] or evidence of general reputation[6] is insufficient.

Lucid interval.

The contract of a lunatic made during a lucid interval is valid.[7]

Definition of lucid interval.

A lucid interval is not necessarily a complete restoration

[1] *Imperial Loan Co.* v. *Stone*, 1892, 1 Q.B. 599. But see circular of Commissioners in Lunacy in Appendix.

[2] *Ib.*

[3] Cp. the Scotch cases of *Moffat* v. *Moffat*, 1813, 1816, 6 Pat. App. 181; *Berry* v. *Anderson*, 1821, 1 S. 66, 1824, 2 S. App. 212; *White* v. *Ballantyne*, 1823, 1 S. App. 472; *M'Niell* v. *Moir*, 1824, 2 S. App. 206; *Scott*, 1825, 3 Mur. 526; *M'Diarmid* v. *M'Diarmid*, 1826, 4 S. 583, 1828, 3 W.S. 37; *Kyle* v. *Kyle*, 1826, 5 S. 128—a remarkable case, in which a sale of a property by an interdicted facile person to one of his interdictors for onerous and rational cause was sustained; *Fraser* v. *Fraser*, 1827, 5 S. 301; *Duncan* v. *Martin*, 1839, M'F. 278; *Mansfield* v. *Stuart*, 1841, 3 D. 1103; *Wright* v. *Harley*, 1847, 9 D. 1151; *Cairns* v. *Marianski*, 1850, 12 D. 919, 1286; *Henderson* v. *Thomson*, 1862, 1 Stuart 264; *Taylor* v. *Provan*, 1864, 2 M. 1226; *Pollok* v. *Burns*, 1875, 2 R. 497.

[4] *Bridgman* v. *Green*, 1757, Wilm. 61; *Lord Donegal's case*, 1752, 2 Ves. sen. 408; *Clarkson* v. *Hanway*, 1723, 2 P.W. 203; *Blachford* v. *Christian*, 1829, 1 Knapp, 73, 77.

[5] *Niell* v. *Morley*, 1804, 9 Ves. 478.

[6] *Greenslade* v. *Dare*, 1855, 20 Beav. at p. 292.

[7] Bract. fol. 420, 4 Rep. 125 (a) *A.-G.* v. *Parnther*, 1792, 3 Bro.CC. 441; *Towart* v. *Sellars*, 1817, 5 Dow P.C. 231; *Selby* v. *Jackson*, 1843, 6 Beav. 192; and cp. *Faulder* v. *Silk*, 1811, cit. 5 Dow P.C., at p. 238; and *Myddleton* v. *Kenyon*, 1794, 2 Ves. jun. 391; and cp. the Scotch case of *Currie* v. *Jardine*, 1827, 5 S. 838.

to mental vigour previously enjoyed,[1] nor is it merely the cessation or suppression of the symptoms of insanity,[2] it is the recovery by the lunatic of capacity to understand what he is doing.[3] (See *post* as to wills, pp. 33 and 55.)

Supervening insanity.

Supervening insanity does not release a lunatic from contracts entered into while he was of sound mind, unless it renders performance impossible.[4]

In *Selby* v. *Jackson*[5] deeds executed by a lunatic under restraint in an asylum under medical certificates were upheld on the grounds that they were beneficial, and that the lunatic was capable of understanding the effect of what he did.

Burden of proof.

The burden of proving a lucid interval rests on the party asserting its existence.

Inquisition how far evidence.

An inquisition *de lunatico inquirendo* is only presumptive evidence of incapacity,[6] or of capacity.[7]

Implied obligation for necessaries.

The law implies on the part of a lunatic, whether so found or not,[8] an obligation[9] to repay out of his own property the reasonable cost of necessaries supplied to him with the intention of constituting a debt against his estate,[10] and it is immaterial whether the party supplying the necessaries is or is not aware of the lunacy.[11]

What are necessaries?

The term necessaries includes not only food,[12] clothing, maintenance, etc., but expenses incurred for the protection of the

[1] *ex parte Holyland*, 1805, 11 Ves. 10.

[2] *Dyce Sombre* v. *Prinsep*, 1856, Deane, at p. 110.

[3] Cp. *Imperial Loan Co.* v. *Stone*, 1892, 1 Q.B. 599.

[4] Cp. *Hall* v. *Warren*, 1804, 9 Ves. 605; *Owen* v. *Davies*, 1747-8, 1 Ves. sen. 82; *Pegge* v. *Skynner*, 1784, 1 Cox 23; and see Scotch case of *Scott* v. *Dunn*, 1837, 15 D. 924. Cp. *Howden* v. *Sibbald*, 1833, 11 S. 561, as to appointment of agent made in prospect of intervening insanity.

[5] See note 7, p. 14.

[6] Cp. *Sergeson* v. *Sealey*, 1742, 2 Atk. 412; *Clement* v. *Rhodes*, 1825, 3 Add. 37; *Hall* v. *Warren*, 1804, 9 Ves. 609; *Rodd* v. *Lewis*, 1755, 2 Lee 176; *Portsmouth* v. *Portsmouth*, 1828, 1 Hagg. E.R. 355; *re Watts*, 1837, 1 Curt. 594; *Bannatyne* v. *Bannatyne*, 1852, 2 Rob. E.C. 472; *Elliot* v. *Ince*, 1857, 5 W.R. 482.

[7] *Hume* v. *Burton*, 1784, 1 Ridg. P.C. 1; and cp. *ex parte Bradbury*, 1839, 3 Jur. 1108.

[8] Cf. *Brockwell* v. *Bullock*, 1889, 22 Q.B.D. 567.

[9] See observations of Cotton, L.J., on erroneous use of the term "implied contract" in the earlier cases, in *Rhodes* v. *Rhodes*, 1890, 44 Ch.D. at p. 105, and cf. *Manby* v. *Scott*, 1659, Sid. 112; *Howard* v. *Digby*, 1834, 2 Cl. & F. 638; *Dane* v. *Kirkwall*, 1838, 8 C. & P. 679; *Wentworth* v. *Tubb*, 1841, 1 Y. & C. N.R. 171; *Baxter* v. *Portsmouth*, 1826, 5 B. & C. 172; *Nelson* v. *Duncombe*, 1846, 9 Beav. 211. *Re Rhodes*, 1890, 44 Ch.D. 94, and see Sale of Goods Act 1893, 56 and 57 Vict. c. 71, sec. 2.

[10] It is by the absence of such intention that the decision in *Carter* v. *Beard*, 1839, 10 Sim. 7, is to be explained. As to allowances by Court in Lunacy, where there is no legal debt, see *re Weaver*, 1882, 21 Ch.D. 615. The doubt expressed in this case as to whether the implied obligation referred to in the text arises, is disposed of by *re Rhodes*. See note 9.

[11] The decision in *Baxter* v. *Portsmouth*, 1826, 5 B. & C. 170, went upon absence of notice. But in *Wentworth* v. *Tubb*, *ubi sup.* the plaintiff had notice, and yet an inquiry was ordered as to the existence of his debt; and in *Rhodes* v. *Rhodes* (note 9), the point that notice was material was never raised.

[12] Cp. *West Ham Union* v. *Pearson*, 1890, 54 J.P. 645.

lunatic and his estate, *e.g.* the costs of obtaining[1] or resisting[2] a commission.

The question of "necessaries" or "not necessaries" is one of fact, and therefore for the jury. But like all other questions of fact it should not be left to the jury by the judge unless there is evidence on which they can reasonably find in the affirmative.[3] The lunatic may, in order to show that goods, for the price of which he is being sued, were not necessaries, give evidence to prove that he was sufficiently provided with goods of the kind at the time of sale.[4]

Sale of Goods Act 1893.

And see section 2 of the Sale of Goods Act 1893 (56 and 57 Vict. c. 71). "Where necessaries are sold and delivered to . . . a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor"; and again—"necessaries in this section mean goods suitable to the condition in life of such person, and to his actual requirements at the time of the sale and delivery."

Wife's authority.

A lunatic is liable for necessaries supplied to his wife by a person who was not aware of his unsoundness of mind, and to whom he had held out his wife as agent while he was of sound mind,[5] and this rule has been applied to money advanced to the wife and expended by her in payment of her necessary expenses.[6] But the agency of the wife of a lunatic, and the authority to pledge the husband's credit, do not differ from those ordinarily implied from the relation of husband and wife, and accordingly where the wife has received money sufficient for and applicable to the provision of necessaries, the husband is not liable.[7]

As to execution of contracts and powers by lunatics, see sec. 120 (*i*) and (*l*) of Act of 1890, *post*.

[1] *Williams* v. *Wentworth*, 1842, 5 Beav. 325, *re Cumming*, 1854, 5 De G. M. & G. 30; *Chester* v. *Rolfe*, 1853, 23 L.J.Ch. N.S. 233; *Stedman* v. *Hart*, 1854, *ib.* 908; *Brockwell* v. *Bullock*, *ubi sup.*; and that even if the inquisition results in the alleged lunatic's favour, *Nelson* v. *Duncombe*, 1846, 9 Beav. 211; *ex parte Hill*, 1813, Coop. 54 (t. Eldon); *re Cathcart*, 1892, 1 Ch. 549; 1893, 1 Ch. 467.

[2] *Wentworth* v. *Tubb*, 1843, 7 Jur. 738.

[3] *Ryder* v. *Wombwell*, 1868, L.R. 4, Ex. 32.

[4] *Johnstone* v. *Marks*, 1887, 19 Q.B.D. 509, overruling on this point *Ryder* v. *Wombwell*.

[5] *Drew* v. *Nunn*, 1879, 4 Q.B.D. 661. Insanity, but, *semble*, only if of such a character as to incapacitate a principal from himself acting, operates as a revocation of agency, s.c. per Brett, L.J., at p. 666. Bramwell, L.J., *ubi sup.* at p. 669, suggested that "in order to annul the authority of an agent insanity must amount to *dementia*." It is submitted that a more satisfactory test would be whether the principal would still be capable of appointing another agent. Cp. the Scotch cases of *Pollok* v. *Paterson*, 1811, 16 F.C. 369, and *Howden* v. *Sibbald*, 1833, 11 S. 561 (appointment made in prospect of supervening insanity), and *Wink* v. *Mortimer*, 1849, 11 D. 995.

[6] *Davidson* v. *Wood*, 1863, 2 N.R. 15, 1 De G. J. & S. 465, and cp. *Read* v. *Legard*, 1851, 6 Ex. 636.

[7] *Richardson* v. *Du Bois*, 1869, L.R. 5 Q.B. 51; *Chappell* v. *Nunn*, 1879, 4 L.R. Ir. 316.

CHAPTER II

INSANITY IN RELATION TO MARRIAGE

1. *The Capacity of the Insane to Marry.*

HERE again, as in the case of insanity and contract (see *ante* p. 8; and *post* p. 32, as to testamentary capacity), it is advisable to employ the historical method. It is proposed therefore first to sketch the development of the law as to the capacity of the insane to marry, and then to state its present position.

(*a*) HISTORICAL DEVELOPMENT OF THE LAW.

Development of law. Sacramental idea.

At one period in the history of our law, when the sacramental idea of marriage was predominant,[1] it appears to have been held, in consonance with the opinion of the civilians,[2] though contrary to the doctrine of the *jus civile*,[3] that the marriage even of an idiot,[4] and *a fortiori* of a lunatic, was valid, and consequently that his children were legitimate. This rule gave place, however, in the eighteenth century to a rule that idiots being incapable of giving the consent which is the basis of marriage, were *ipso facto* incapable of marrying, and that the marriage of a lunatic was absolutely void unless it had been contracted in a lucid interval. The statute 15 Geo. II. c. 30,[5] which

New rule in 18th century.

15 Geo. II. c. 30.

[1] Cp. the language of Sir Wm. Scott in *Turner* v. *Meyers*, 1808, 1 Hagg. C.R. 414.

[2] Sanchez, *De Sanc Mat.* lib. 1, disp. 8, num. 15 *et seq.*

[3] Cp. Dig. 23, 2, 16, 2: "Furor contrahi matrimonium non sinit quia consensu opus est."

[4] Cp. Rolle's Abridg. 357, 50 (7): "Un idéot à nativitate poet consenter en marriage et ses issues serront legitimate."

[5] This Act was passed to meet the case of Mr. Newport, the natural son of the Earl of Bradford, who left him a very large fortune, with remainder to another person. Com. Dig. tit. Idiot (D I.)

was extended to Ireland by 51 Geo. III. c. 37, provided that the marriages of lunatics and persons under phrensies (if so found lunatics under a commission or committed to the care of trustees by any Act of Parliament), before they were declared of sound mind by the Lord Chancellor or the majority of such trustees, should be void, without any proceedings for nullity,[1] even although they were contracted during lucid intervals.[2]

Practice under 15 Geo. II. c. 30.

The practice under these statutes was thus summarised by Sir William Scott in *Turner* v. *Meyers*:[3] "When a commission of lunacy has been taken out, the conclusion against the marriage will be founded on the statute; where there has been no such commission, the matter is to be established on evidence. The statute has made provisions against such marriages even in lucid intervals, till the commission has been superseded. In other cases the Court will require it to be shown by strong evidence that the marriage was clearly had in a lucid interval, if it is first found that the person was generally insane."

Repeal of 15 Geo. II. c. 30.

The statute 15 Geo. II. c. 30 was repealed by the Statute Law Revision Act 1873 (36 & 37 Vict. c. 91),[4] since when there has been no further legislation in England as to the capacity of the insane to marry.

Marriage rendered valid by consummation.

The doctrine appears at one time to have been in vogue that a marriage by a *non compos* when of unsound mind might be made valid by consummation in a lucid interval.[5] But by the time of Lord Stowell it was clearly established that marriage, being a consensual contract, could only be entered into by persons who were capable of consent,[6] and the chief difficulty of the Courts has been as to determining what kind or degree of consent was necessary. In *Turner* v. *Meyers*,[3] Sir William Scott said: "We see that madness may subsist in various degrees, sometimes slight, as partaking rather of disposition or humour, which will not incapacitate a man from managing his own affairs or making a valid contract. It must be something more than this, something which, if there be any test, is held by the common judgment of mankind to affect his general fitness to be trusted with the general management of himself and his own concerns." Here, it will be observed, the test of capacity to marry is identified with the test of competency applied in inquisitions *de lunatico inquirendo*.

Consensual idea predominant.

In *Turner* v. *Meyers*,

Test of competency applied in inquisitions adopted.

[1] *Ex parte Turing*, 1812, 1 V. & B. 140.
[2] Cp. 1 Hagg. C.R. 417.
[3] *Ib.* 414.
[4] *Semble*, the so-called "Irish Act" is still in force in England. See Appx., *post*.
[5] *E.g.* 1 Collinson, 555.
[6] Cp. *Harford* v. *Morris*, 1776, 2 Hagg. C.R. 423-427; *Turner* v. *Meyers*, *ubi sup.*

In *Brownrigg* v. *Reane*[1] we advance a stage further: "If the incapacity," said Sir John Nicholl in that case, "be such . . . that the party is *incapable of understanding the nature of the contract itself*, and incapable from mental imbecility to take care of his (or her) own person and property, such a person cannot dispose of her (or his) person and property by the matrimonial contract any more than by any other contract." The only objections to which this definition is obnoxious are that it fails to define capacity to understand the nature of the contract, and that it mixes up the test of capacity to marry with the question of competency raised on inquisitions *de lunatico inquirendo*.

In *Brownrigg* v. *Reane*, Test of capacity to understand the contract applied, but imperfectly.

In *Harrod* v. *Harrod*[2] the modern test of capacity was practically enunciated by Vice-Chancellor Wood. "The contract itself," said that learned judge, "in its essence, independently of the religious element, is a consent on the part of a man and woman to cohabit with each other, and with each other only. . . . When the hands of the parties are joined together, and the clergyman pronounces them to be man and wife, they are married, if they understand that by that act they have agreed to cohabit together, and with no other person." The growth of the modern doctrine as to the capacity of the insane to marry, like that of their testamentary capacity (see p. 36), was, however, arrested by the metaphysical doctrine that any the least degree of insanity "vitiates," in the words—constantly misinterpreted and misapplied—of Sir John Nicholl in the *Portsmouth case*,[3] "all acts." In *Hancock* v. *Peaty*,[4] Sir J. P. Wilde said: "The Court here has not, as in many testamentary cases, to deal with varieties or degrees in strength of mind, with the more or less failing condition of intellectual power in the prostration of illness, or the decay of faculties in extended age. The question here is one of health or disease of mind, and if the proof shows that the mind was diseased, the Court has no means of gauging the extent of the derangement consequent upon that disease, or affirming the limits within which the disease might operate to obscure or divert the mental power." This doctrine was quite unnecessary for the decision of the case, as there was abundant evidence of incapacity within the meaning of the language used by Page Wood, V.-C., in *Harrod* v. *Harrod*.[2] It was impliedly over-

Harrod v. *Harrod*. Modern test.

Metaphysical doctrine.

Hancock v. *Peaty*.

[1] 1812, 2 Phill. E.R. 69, 70.
[2] 1854, 1 K. & J. 14, 16.
[3] 1828, 1 Hagg. E. R. 355, 359.
[4] 1867, 1 P. & D. 335, 341.

Impliedly overruled in *Banks* v. *Goodfellow*.

ruled by the decision of the Court of Queen's Bench in *Banks* v. *Goodfellow*,[1] and has now been finally set aside. Thus, in *Durham* v. *Durham*,[2] Sir James Hannen said: "It appears to me that the contract of marriage is a very simple one, which (it) does not require a high degree of intelligence to apprehend. It is an engagement between a man and woman to live together and love one another as husband and wife to the exclusion of all others. This is expanded in the promises of the marriage ceremony by words having reference to the natural relations which spring from that engagement, such as protection on the part of the man and submission on the part of the woman. . . . A mere comprehension of the promises exchanged is not sufficient. The mind of one of the parties may be capable of understanding the language used, but may yet be affected by such delusions, or other symptoms of insanity, as may satisfy the tribunal that there was not a real appreciation of the nature of the engagement apparently entered into."

Durham v. *Durham*.

Undue influence.

It remains to notice the growth of the law as to the effect of undue influence upon the capacity to marry. Down to the decision of the late Sir Charles Butt in *Scott* v. *Sebright*,[3] the cases in which marriages were set aside on the ground of undue influence belonged chiefly to the category of "considerable weakness of mind circumvented by proportionate fraud."[4] Thus in the *Portsmouth case*[4] a marriage *de facto* solemnised under circumstances of clandestinity inferring fraud and circumvention, between the Earl of Portsmouth, who was of weak and deranged mind, and the daughter of his trustee and solicitor, who had great influence over him, and by whom he was clearly considered and treated as of unsound mind, was pronounced null and void, and the pretended wife was condemned in costs. On the other hand there were cases in which the fact that a person had gone through a marriage ceremony only under the influence of fear or coercion, which paralysed the powers of volition, so that the petitioner, while understanding the words used and the acts done, merely gave expression to the will of the respondent, was held—without any evidence of mental disease—to be good ground for a decree of nullity.[5] Evidence falling short of this was, however,

[1] 1870, L.R., 5 Q.B. 549.
[2] 1885, 10 P.D., at p. 82.
[3] 1886, 12 P.D. 21.
[4] Per Sir John Nicholl, in *Portsmouth* v. *Portsmouth*, 1828, 1 Hagg. E.R. 355, 359; and cp. *Harford* v. *Morris*, 1776, 2 Hagg. C.R. 423; *Smith* v. *Smith*, 1818, cit. 3 Add. 67; *Hull* v. *Hull*, 1851, 15 Jur. 710.
[5] Cp. *Fulwood's case*, 13 Car. I., Cro. Car. 482, 488, 489; *Wilkinson* v. *Wilkinson*, 1842, 4 N. of C. 295.

insufficient. Thus in Miss Field's case,[1] the consent was obtained by a threat not only to shoot the threatener himself, but also to injure the young lady's lover, and though the husband was fifty-two, and almost in the position of guardian to the young lady, who was only eighteen, Lord Devon, with the concurrence of Lords Cottenham, Lyndhurst, and Denman, refused to move the second reading of the bill to dissolve the marriage. In *Scott* v. *Sebright*,[2] Sir Charles Butt held that whenever from natural weakness of intellect or from fear—*whether reasonably entertained or not*—either party is actually in a state of mental incompetence to resist pressure improperly brought to bear, such party cannot enter into a valid contract of marriage—there being no more consent here than in the case of a person of stronger intellect and more robust courage yielding to stronger pressure or more serious danger. In *Scott* v. *Sebright*, the petitioner, a young woman twenty-two years of age, entitled to the sum of £26,000 in actual possession and a considerable sum in reversion, had become engaged to the respondent, and shortly after coming of age was induced by him to accept bills to the amount of £3325. The person who had discounted these bills issued writs against her, and threatened to make her bankrupt. The distress caused by these threats seriously affected her health and reduced her to a state of mental and bodily prostration in which she was incapable of resisting threats of coercion, and being assured by the respondent that the only method of evading bankruptcy proceedings and exposure was to marry him, she reluctantly went through a ceremony of marriage with him at a registrar's office. In addition to other threats of ruining her by allegations that he had seduced her, the respondent immediately before the ceremony threatened to shoot her if she showed that she was not acting of her free will. The marriage was never consummated, and the petitioner and the respondent separated immediately after the ceremony. Sir Charles Butt held that there was not such a consent on the part of the petitioner as the law required for the making of a marriage, and declared the ceremony before the registrar null and void.

Scott v. *Sebright.*

Two other cases of the same description have since come before the Courts. In *Cooper* v. *Crane*[3] the petitioner and respondent were cousins. The respondent had made the petitioner an offer of marriage which she had refused. One afternoon, under the pretence of going to St. Paul's Cathedral, he took her

Cooper v. *Crane.*

[1] 1848 2 H.L.C. 48. [2] 1886, 12 P.D. 21. [3] 1891, Prob. 369.

to St. Bride's Church, Fleet Street, and outside the church said to her suddenly, "You must come into the church and marry me, or I will blow my brains out, and you will be responsible." No pistol was produced by the respondent, but the petitioner said she knew that he carried one. She yielded to the threat, went through the ceremony, for which the respondent had previously made the necessary arrangements, without showing any signs of unwillingness, and signed the register in a firm hand. At the date of the ceremony the petitioner was twenty-four and the respondent under twenty-one years of age. The respondent after the ceremony took the petitioner home and left her at the door of the house. The marriage was never consummated, and the parties never saw each other afterwards, though they corresponded, but only on the footing of cousins. The petitioner never told her parents or friends of the marriage, because, as she said, she did not regard it as binding. There was evidence that she was of a weak, impressionable character, with not much power of resistance to a stronger will, but that she was not particularly predisposed to hysteria in the medical sense of the term. Henn Collins, J., held that the facts were insufficient to rebut the presumption of consent. The facts in this case fell short of those on which Sir Charles Butt acted in *Scott* v. *Sebright* (*sup.*), where the petitioner was younger than the respondent by five or six years, the undue influence exerted included threats of violence, infamous suggestions, and fear of bankruptcy, and there was abundant evidence of physical and mental prostration. But it is not clear that the case did not come within the principle which Sir Charles Butt laid down in *Scott* v. *Sebright*. Mr. Justice Collins made no reference to this principle in his judgment, and appears to have tested the case by the older criteria stated above.

Ford v. *Stier*.

In *Ford* v. *Stier*,[1] Mr. Justice Barnes granted a decree of nullity under circumstances weaker in some respects than those in *Cooper* v. *Crane* (*sup.*), as there was no threat of personal violence, although stronger as regards the age of the petitioner and her knowledge of the nature of the ceremony. The petitioner, whose maiden name was Ella Louise Clark, went through the ceremony of marriage with the respondent, William Douglas Somerset Keppel Stier, at the church of St. Mary Abbotts, Kensington.

It appeared from the evidence that at the time of this

[1] 1896, Prob. 1. See note on this case in *Law. Quar. Rev.* vol. 12, p. 102.

marriage the petitioner was only seventeen years of age, was nervous and inexperienced, and entirely under the control of her mother, who was a very strong-minded woman. The petitioner had only known Stier for about three weeks, as a friend of her brother, and it was not suggested that any affection existed between them. Stier obtained a license for the marriage by means of a false affidavit, to the effect that her father approved the marriage and had given his consent, whereas he knew nothing at all about it. On the morning of 5th June 1889 the petitioner's mother told her to come out with her for a drive. When they arrived at St. Mary Abbotts Church, Kensington, her mother took her into the church, where she found Stier waiting. Her mother told her she was to be betrothed to Stier. She objected to being betrothed to a man she hardly knew and did not love. Stier said, "It's all right, do as your mother tells you." She then went through the ceremony, under the impression that she was going through a ceremony of betrothal. When she came out of church she threw away the ring that Stier had given her. Her mother ordered her not to tell any one what had occurred. Her mother died in 1890, and she never mentioned the matter to her father either before or after her mother's death. The marriage was never consummated. Stier left for Africa immediately after the ceremony at St. Mary Abbotts, and she had not seen him since. In November 1893 she married a Mr. Ford. In 1894 Stier wrote from Africa to her father, telling him of the marriage. Her father spoke to her on the subject, and she gave him the same account as above. The parish clerk of Kensington and two witnesses to the ceremony, whom he had procured, remembered the marriage, but had no recollection of any special circumstances connected with it. The petitioner's brother accompanied Stier to Africa in June 1889. Whilst there Stier told him of the marriage, and they quarrelled in consequence. The brother returned to England shortly afterwards, and spoke to his mother about the matter. She begged him to say nothing about it to any one, and he complied with her request. Her father remained in entire ignorance of what had happened until he got Stier's letter in 1894.

Barnes, J., held that the petitioner was not a consenting party, but acted under the duress of her mother and the respondent, and was not a free agent.

Hypnotism.

Questions of great interest and difficulty might arise with reference to marriages alleged to have been brought about by

hypnotic, especially by post-hypnotic suggestion.[1] The difficulty in such cases, however, is more of a medical than of a legal character. They would be determined by the ordinary law as to undue influence.

(*b*) Statement of Law and Practice.

Nature of marriage contract.

Marriage, in its civil aspect, is an engagement between a man and a woman to live together as husband and wife to the exclusion of all others.[2]

First requisite to capacity, knowledge of nature of contract. Comprehension of words used not enough.

The first requisite to the existence of capacity to marry is therefore a knowledge by the parties at the time of the marriage that they are entering into an engagement of this character. Mere comprehension of the meaning of the words used in the marriage ceremony is not sufficient.[3] On the other hand, if the parties understand the nature of the contract they are entering into, and there is no undue influence—as to which see *post* p. 26—the marriage will be valid, even if the parties are deaf and dumb, or there is a strain of insanity or delusion in one or other or both of them.[4] *Harrod* v. *Harrod*[2] is an illustration of the first part of this proposition. There Vice-Chancellor Page Wood upheld the marriage of a deaf and dumb woman who had never been taught to talk with her fingers, could not read or write, could only be made to understand anything by persons who had a long and intimate acquaintance with her, and did not know the value of money—on the ground that her conduct before and after marriage showed that she knew the nature of the contract into which she had entered. This case might almost be cited as an illustration of the latter part of the proposition under consideration also; since, although Page Wood, V.-C., held that the woman's mental state was one of "dulness of intellect" as opposed to "unsoundness of mind," he appears to have been influenced to

Marriage of deaf and dumb. Insanity does not *ipso facto* destroy capacity. *Harrod* v. *Harrod*.

[1] Cp. the Czynski case, 1894, *New York Medico-Legal Journal*, vol. 13, p. 51.

[2] *Harrod* v. *Harrod*, 1854, 1 K. & J. 14, 16; *Durham* v. *Durham*, 1885, 10 P.D. at p. 82.

[3] *Durham* v. *Durham*, *ubi sup.* As to the critical period, see *Parker* v. *Parker*, 1757, 2 Lee 382; *ex parte Ferne*, 1801, 5 Ves. 832; *Legeyt* v. *O'Brien*, 1834, Milw. E.R. 337; *Ellis* v. *Bowman*, 1851, 17 L. T. 11.

[4] It is chiefly as *faits accomplis* that the marriages of insane persons have come before the Courts. Any person marrying a lunatic subject to the jurisdiction in lunacy, commits a contempt of Court (*Mrs. Ash's case*, 1702, Prec. Ch. 203); and even where the marriage is afterwards upheld (but see p. 18 *ante* note 4), the Court will secure the property of the lunatic—*Packer* v. *Wyndham*, 1715, *ib.* 412; *Nightingale* v. *Lockman*, 1729, Mos. 231. Insanity not affecting capacity to understand the nature of the contract will not avoid a marriage—*Lewis* v. *Lewis*, 1890-91, 44 Minn. 124 (kleptomania); *Baker* v. *Baker*, 1883, 82 Indiana 146; *Bell* v. *Bennett*, 1886, 73 Ga. 784 (non-support of wife owing to insanity). As to effect of delay in prosecuting remedy, *Gerhold* v. *Wyss*, 1883, 12 N. Y. Repr. 800. And see circular of Commissioners in Lunacy in Appendix.

some extent in making this distinction by the conception that "insanity vitiates all acts."[1] But the case of *Cannon* v. *Cannon*[2] is an instance of a decree of nullity being refused on the ground of the capacity of the respondent to understand what she was doing at the critical period, although the learned judge, Sir James Hannen, conceded that, on the evidence, it was possible that she was then suffering from melancholia.

Cannon v. *Cannon.*

The Irish case of *B.* v. *A.*[3] is a direct authority on the point. In that case, where a decree of nullity was refused, although the respondent was undoubtedly of unsound mind prior to the marriage, Warren, J., said, "Was he of unsound mind on the (day of the marriage)? so unsound that he could not contract marriage? I say *so* unsound, for as regards questions of marriage as well as of wills the old metaphysical doctrine as to the nature and degree of unsoundness being immaterial (see *Waring* v. *Waring*, 6 Moo. P.C. 341, and *Smith* v. *Tebbitt*, L.R., 1 P. & M. 398, etc.), has been overruled and reversed (*Banks* v. *Goodfellow*, L.R., 5 Q.B., 549; *Durham* v. *Durham*, 10 P.D. 80)."

B. v. *A.*

In none of the cases does the question seem to have been raised, whether the fact that one of two parties to a marriage had notice of the incapacity of the other at the time of contracting it makes any difference as in the case of ordinary contracts (see *ante* p. 14). It is conceived that since marriage not only is a contract, but involves a change of status and rights and obligations of a continuing and exceptionally important character, the question of notice is immaterial where incapacity can be proved.[4] In cases of insanity falling short of the unsoundness of mind which produces incapacity, the question of notice may become of importance as an element showing the existence of fraud or undue influence. It is scarcely necessary to add that admissions or statements by the sane spouse as to circumstances pointing to the existence of unsoundness of mind in the other contracting party at the time of the marriage are relevant to the question whether there was such unsoundness of mind at the critical period as to invalidate the marriage.[5]

Query, whether notice material.

[1] 1854, 1 K. & J. pp. 7 and 8, and cp. Swinburne on Espousals, 204.

[2] 1885, 10 P.D. 96; *Durham* v. *Durham*, *ib.* 80, in which also a decree was refused, was certainly a "borderland" case; and cp. *Hunter* v. *Hunter*, 1881, *ib.* 93, where a decree was granted.

[3] 1891, 27 L.R. Ir. 587.

[4] Cp. *Maynard* v. *Hill*, 1888, 105, U.S. 190; and the language of Sir John Nicholl in *Elliott* v. *Gurr*, 1812, 2 Phill. E.R., at p. 19.

[5] It is in this sense that the question of notice was dealt with in *Harrod* v. *Harrod*, *ubi sup.*, at p. 12, and *Durham* v. *Durham*, *ubi sup.*

Promise of marriage.

The contract of promise of marriage stands on a different footing. There the rule applicable to ordinary contract applies,[1] and a defendant in an action for breach of promise, relying on unsoundness of mind at the time of the promise, must show not only that he was incapable of making the promise, but that the other contracting party was aware of the fact.[2]

Even if, however, these points are not established, the defendant will be entitled to judgment if he prove that he was incapable at the time fixed for the performance of the promise,[3] unless he has committed the breach complained of while sane.

The fact that a party had, prior to making a promise of marriage, been insane and confined in an asylum is no answer to an action for a subsequent breach of the promise.[4]

An interesting American case is cited in Hamilton and Godkin's *For. Med.* II. 132, *Harford* v. *Singleton,* where £300 damages were awarded against an old man who, *after* the promise of marriage was made, had an attack of apoplexy and was stated by medical experts to be suffering from mental weakness and to be liable to a fresh attack if he was excited, but not to be incapable of marriage. This case would afford some authority for the proposition that in considering the possibility of performance the degree of mental unsoundness will be taken account of. But the jury appear to have been influenced by the view that there had been too long a delay in the performance of the promise *before* the attack of apoplexy.

Second requisite to capacity, freedom from undue influence.

The second requisite to the capacity to marry is freedom from any species of undue influence—whether fraud, circumvention, force, duress, or fear. The existence of any of these elements at the critical period to such a degree as to prevent the marriage from being the real act of either of the parties will invalidate it.

The growth of the law of undue influence in regard to marriages is sketched at pp. 20-23. The above is, it is conceived, an accurate statement of its present position.

Burden of proof of incapacity.

Everything is presumed in favour of a marriage regularly solemnised. The burden of proving incapacity, therefore, rests on the person alleging its existence.[5] The question as to how this burden may be discharged cannot here be discussed at length, as it belongs to the general law of evidence, and neither

[1] Cp. *Imperial Loan Co.* v. *Stone,* 1892, 1 Q.B. 599.

[2] *Barnard* v. *Jarrard,* 1896, *Times,* Feb. 14.

[3] *Ib.*

[4] *Baker* v. *Cartwright,* 1861, 30 L.J. C.P. 364.

[5] *Cannon* v. *Cannon,* 1885, 10 P.D., at p. 98.

has given rise to the controversies, nor possesses the special features, which justify such a discussion in regard to the *onus probandi* in the case of wills, *post* p. 56.

Who may petition for decree of nullity.

It may be convenient to consider at this point the various parties by whom proceedings for nullity may be taken.

Sane contracting party.

The sane contracting party may of course petition either—which is the common case[1]—while the contracting party is still of unsound mind; or after his or her recovery, where, for instance, the attack of incompetency was of a temporary character, for as the critical period in regard to capacity to marry is the time of the marriage, subsequent recovery will not validate a marriage any more than supervening insanity[2] will avoid it.

Insane contracting party.

The insane contracting party after recovery may petition for a decree of nullity,[3] and assuming that he is, at the time when the proceedings are taken, *sui juris* and sane, no other person can institute them on his behalf,[4] and proceedings already instituted by a guardian while he was insane will be discontinued on recovery. The proper procedure in the latter case is to move the Court to vacate the order appointing the guardian.[5] "What degree of evidence," said Sir William Scott in the case[6] from which this latter proposition is taken, ". . . would satisfy the Court that the act was the act of an insane moment when" (the party alleged to be insane and now recovered) "has taken no step to annul the act, but rather adheres to it?"

After recovery.

Degree of proof.

The degree of proof must be peculiarly strong when a person brings a suit on allegation of his own incapacity, by exposing to view the changes of his mind.[7]

Guardian where contracting party, whether sane or not, is a minor.

Where a sane or insane contracting party who is seeking to annul a marriage on the ground of insanity is a minor, he must act by his guardian.[8] If the minor becomes of age after the proceedings have been instituted by his guardian, and is sane, they must be continued by himself.[9]

Committee where subject to jurisdiction in lunacy.

Where the contracting party is a lunatic so found by inquisition, proceedings for nullity should be taken by his com-

[1] Cp. *Hunter* v. *Hunter* and *Cannon* v. *Cannon*, 1885, 10 P.D., at pp. 93 and 96.

[2] Cp. *Hayward* v. *Hayward*, 1858, 1 Sw. & T. 81, 84; *Hall* v. *Hall*, 1864, 3 Sw. & T. 347, 349. Supervening insanity affords no ground for either divorce or judicial separation.

[3] *Turner* v. *Meyers*, 1808, 1 Hagg. C.R. 414.

[4] *Turner* v. *Meyers*, 1804, *ib.* (n.), an earlier proceeding in the same case by the father of the insane contracting party, after recovery of the latter, which was dismissed.

[5] *Hancock* v. *Peaty*, 1867, 1 P. & D. 336-7.

[6] See note 4.

[7] *Turner* v. *Meyers*, at p. 418.

[8] *Parnell* v. *Parnell*, 1814, 2 Hagg. C.R. 171.

[9] Cp. *Hancock* v. *Peaty*, *ubi sup.*

mittee.[1] If no committee has been appointed, a guardian *ad litem* will be nominated.[2] In *Fry* v. *Fry*[3] the majority of the Court of Appeal expressed the opinion—without deciding the point—that rule 196 of the Divorce Rules, providing for the appointment of a guardian *ad litem*, "if no committee should have been appointed," applied only where a person had been found lunatic by inquisition. It is conceived, however, that an order would be made in the case of persons made subject to the jurisdiction in lunacy under sec. 116, subsec. (1), of the Act of 1890. It does not seem that the person appointed under subsection (2) of section 116 in such cases could be treated as a committee for the purpose of instituting proceedings for nullity.

With consent of Judge in Lunacy.

The consent of the Judge in Lunacy, although apparently not strictly necessary,[4] should, as a matter of convenience[5] and in order to protect the committee in any question of costs, first be obtained. The Judge in Lunacy will determine whether proceedings should be taken by the committee of the person or of the estate.

Curator or guardian *ad litem*.

If an insane contracting party is *sui juris*, and not subject to the jurisdiction in lunacy, a curator or guardian *ad litem* will be appointed by the Court to institute proceedings for nullity on his behalf,[6] provided always that there is no substantial and *bonâ fide* dispute as to the unsoundness of mind of the person to whom it is proposed to assign the guardian.[7]

Proceedings after death of contracting party.

Where a contracting party is dead, proceedings for nullity may be instituted by any person having an interest in getting the marriage set aside, *e.g.* by the next-of-kin, on the widow's[8] or husband's[9] claim to administration.

Alimony.

In all suits for nullity of marriage brought by or on the part of the husband, the wife *de facto* is regularly entitled as well to alimony as to payment of all such costs as she incurs in her defence.[10]

[1] *Morison* v. *Morison*, 1745, cit. 2 Hagg. C.R. 170; *Fust* v. *Bowerman*, 1790, cit. *ib.* 170, 171; *Parnell* v. *Parnell*, 1814, 2 Hagg. C.R. 169; *Portsmouth* v. *Portsmouth*, 1826, 3 Add. 63; *Woodgate* v. *Taylor*, 1861, 30 L.J., N.S., P. M. & A. 197. But see p. 18 *ante* note 4.

[2] Rule 196, Div. Rules.

[3] 1890, 15 P.D. 50.

[4] *Parnell* v. *Parnell*, *ubi sup.*, at p. 171.

[5] *Ex parte Turing*, 1812, 1 V. & B. 140; *re Smith*, 1818, cit. 3 Add. at p. 67; *re Portsmouth*, 1823, *ib.* 134; *Woodgate* v. *Taylor*, *ubi sup.* (n.); *Mordaunt* v. *Moncrieffe*, 1874, 2 Sc. & Div. at p. 383.

[6] Cp. *Mordaunt* v. *Moncrieffe*, *ubi sup.* A form of order appointing a guardian *ad litem* will be found in the Appendix, *post*.

[7] *Fry* v. *Fry*, 1890, 15 P.D. 50.

[8] *Parker* v. *Parker*, 1757, 2 Lee 382. Cp. *State* v. *Setzer*, 1887, 97 N.C. 252.

[9] *Browning* v. *Reane*, 1812, 2 Phill. E.R. 69.

[10] *Portsmouth* v. *Portsmouth*, 1826, 3 Add. 63. In *Smith* v. *Smith*, 1818, cit. *ib.* 67, the Court of Arches refused to proceed in such a suit until funds were provided by the committee of the husband to enable the wife to conduct her defence.

Alimony and, *a fortiori*, an allowance by the Court in Lunacy out of a lunatic's property for the maintenance of his wife are not assignable.[1] Not alienable.

2. *Effect of Insanity upon Marriage.*

As the validity of a marriage depends on the capacity of the parties at the time of contracting it, supervening insanity does not avoid the marriage nor constitute *per se* a ground either for divorce or for judicial separation.[2] On the other hand, cruelty does not cease to be a cause of suit if it proceeds from violent and disorderly affections or want of moral control, falling short of insanity.[3] Supervening insanity. No ground for nullity or divorce.

Possibly even cruelty springing from intermittent or recurrent insanity might be held a ground for a judicial separation, inasmuch as in such cases there is not a permanent confinement of the offending spouse, and consequently the ordinary protection which the innocent party can obtain by proceedings in lunacy is a delusion.[4] Cruelty springing from insanity ground for separation if intermittent.

But the question whether insanity at the time an alleged matrimonial offence was committed is a bar to a suit for divorce or separation is an open one; and in any event, in order that it may be a bar, the insanity must be of such a character as to have prevented the insane party from knowing the nature and consequences of his act at the time when he committed it.[5] Query, whether insanity bar to divorce, etc. If it is so, when?

Supervening insanity is no bar to proceedings by[6] or against a lunatic husband or wife for divorce or separation for previous Proceedings not arrested by insanity.

[1] Cp. *re Robinson*, 1884, 27 Ch.D. 160.

[2] *Hayward* v. *Hayward*, 1858, 1 Sw. & T. 84; *Hall* v. *Hall*, 1864, 3 Sw. & T., at p. 349.

[3] *Hall* v. *Hall*, *ubi sup.*; and cp. *White* v. *White*, 1859, 1 Sw. & T. 592, where the Court decreed a judicial separation by reason of the wife's violence towards the husband, though it appeared that she had been from time to time in confinement as insane. Cp. *Kirkman* v. *Kirkman*, 1807, 1 Hagg. C.R., at p. 410; *Dysart* v. *Dysart*, 1844, 1 Rob. E.R., at p. 116.

[4] Per Sir Chas. Butt in *Hanbury* v. *Hanbury*, 1892, Prob., at p. 225; and cp. *Curtis* v. *Curtis*, 1858, 1 Sw. & T., at p. 213; *Marsh* v. *Marsh*, 1858, *ib.* 312.

[5] *Hanbury* v. *Hanbury*, 1892, 8 Times L.R., per Lord Esher, M.R., at p. 560. In this case the Master of the Rolls said that he was prepared to lay it down as the law of England that whenever a person did an act which was either a criminal or a culpable act, he was responsible unless he was so insane as not to know its nature and consequences. This *obiter dictum*, so far as it goes, is a judicial corroboration of the rules in Macnaughton's case, and an adoption of these rules as the test of responsibility in tort (see *post* p. 65) as well as in crime. But the question was not fully argued. See the American cases of *Broadstreet* v. *Broadstreet*, 1811, 7 Mass. 471; *Matchin* v. *Matchin*, 1847, 6 Penn. 332, where insanity was held not to be a defence to a suit for divorce on the ground of adultery.

[6] *Parnell* v. *Parnell*, 1814, 2 Hagg. L.R. 169; *Woodgate* v. *Taylor*, 1861, 30 L.J., N.S., P. M. & A. 197; *Baker* v. *Baker*, 1880, 5 P.D. 142.

alleged matrimonial offences.[1] A lunatic so found sues or defends by his committee,[2] of the person or the estate, as the Judge in Lunacy, whose sanction should be obtained (see *ante* p. 28), may determine.[3] If there is no committee, and rule 196 of the Divorce Rules is inapplicable,[2] a lunatic sues by his next friend,[4] and defends by a guardian *ad litem*.[5]

Supervening insanity no effect on incidents of marriage.

It follows from the principle that the critical period as to the validity of a marriage is the time of execution, that supervening insanity not only is no ground for avoiding the marriage, etc. (*v. ante* p. 29), but does not prevent the usual incidents of marriage from arising.

Curtesy, dower.

Accordingly while the right of curtesy or dower will not attach where a marriage is void on account of the lunacy of one of the parties, if there was a valid marriage the subsequent insanity of either of them will not prevent such interests taking effect as in other cases,[6] and a husband's obligation to maintain his wife is not affected by his lunacy or hers.[7]

Maintenance of wife.

Equity to settlement.

A wife may notwithstanding her husband's lunacy enforce her equity to a settlement,[8] and transfer into Court, to the credit of a husband's lunacy, of stock belonging only to the wife is a sufficient reduction into possession by the husband to destroy her right of survivorship.[9]

Reduction into possession.

Alienation under Fines and Recoveries Act.

Under sec. 91 of the Fines and Recoveries Act (3 and 4 William IV. c. 74) the High Court may dispense with the concurrence of the lunatic husband of a married woman, entitled to real property, in a deed alienating it, if it is satisfied: (1) that the husband, owing to insanity, either refuses to concur in the deed, or is incapable of doing so[10] at the time of the application;[11]

[1] *Mordaunt* v. *Moncrieffe*, 1874, 2 Sc. & D. 374.

[2] Ord. xvi. R. S. C., Rule 196 Div. Rules. (As to meaning of this rule, see *ante* p. 28.) But see p. 18 *ante* note 4.

[3] The Judge in Lunacy will "probably consider that as all litigation involves liability to costs," it belongs "rather to the keeper of the purse than of the person to control the proceedings by which they would be incurred," per Sir James Hannen in *Baker* v. *Baker*, 1880, 5 P.D., at p. 152.

[4] Ord. xvi. R. S. C., r. 17.

[5] *Ib.*, and see *ante* p. 28.

[6] Bac. Abr. tit. Idiots and Lunatics (D); Co. Litt. 30(b); and cp. *re Williams*, 1881, 50 L.J., N.S., Ch. 495, as to conversion of lunatic husband's property by wife.

[7] *Brodie* v. *Barry*, 1813, 2 V. & B., at p. 39.

[8] *Re Dixon's Trs.*, 1879, 48 L.J., N.S., Ch. 592. As to approval and preparation of settlement, see *Baldwin* v. *Baldwin*, 1852, 5 De G. & S. 319.

[9] *Re Jenkins*, 1842, 5 Russ. 183.

[10] *Re Murphy*, 1828, 5 Scott, N.R. 166. A statement of belief that it would be impossible to secure the concurrence of the husband will not do. An application should be made to him, and the result of the application should be embodied in an affidavit. There should also be an affidavit by a medical man, and it is not enough to produce an affidavit verifying a medical certificate—*re Reeves*, 1876, 24 W.R. 848; *re Clare's Trust*, 1880, 49 L.J., N.S., Com. Law, 557; cp. *ex parte Saunders*, 1863, 3 N.R. 82.

[11] *Re Turner*, 1846, 3 C.B. 166.

and (2) that the alienation will not be the means of depriving the lunatic of a reasonable maintenance.[1]

Pin money.

Before a husband's estate can be made liable for arrears of the pin money,[2] or of the separate income,[3] received by him, of a lunatic wife, there must be a set-off in its favour of any extraordinary payments made by him on his wife's behalf, which she herself if sane might reasonably have been expected to have made out of such pin money or separate income.

[1] *Ex parte Cloud*, 1864, 3 N.R. 429. The affidavit in support of the application should make this clear, *ib.*

[2] *Howard* v. *Digby*, 1834, 2 Cl. & F. 634, reversing S.C. 1831, 4 Sim. 588; *re Hewson*, 1852, 21 L.J., N.S., Ch. 825.

[3] Cp. *Ridout* v. *Lewis*, 1738, 1 Atk. 269; *Aston* v. *Aston*, 1749, 1 Ves. sen. 267; *Fowler* v. *Fowler*, 1735, 3 P.W. 354; *Smith* v. *Camelford*, 1794, 2 Ves. jun. 698.

CHAPTER III

THE WILLS OF LUNATICS

As in the case of contracts (*ante* p. 8) and marriage (*ante* p. 17), the present position of the law with reference to the wills of lunatics cannot be understood without an historical retrospect. We shall therefore first trace the development of the law on the subject, and then state the existing law and practice.

(*a*) Historical Development of the Law.

Development of law.

The law of England as to the testamentary capacity of the insane may be said to have undergone three distinct stages of development.

Down to 1848. From 1848 to 1870. *Waring* v. *Waring*. After 1870. *Banks* v. *Goodfellow*.

(1) Down to the year 1848, each case of disputed capacity was largely determined on its own merits. (2) From 1848 to 1870, the doctrine laid down by Lord Brougham in *Waring* v. *Waring*,[1] that any the least degree of insanity would vitiate a will prevailed. (3) Since the judgment of Lord Chief-Justice Cockburn in *Banks* v. *Goodfellow*,[2] our Courts have systematically adopted the earlier and sounder test—*Was the capacity in this particular case adequate to the act?*

(1) Down to 1848. *Combe's* case.

(1) *Down to* 1848.—In *Combe's case*[3] it was argued by the Judges in the Star Chamber, "that sane memory for the making of a will is not at all times when the party can speak 'yes' or 'no,' or had life in him, nor when he can answer to anything with sense; but he ought to be of judgment to discern, and to be of perfect memory, otherwise the will is void." This crude definition, which had in it notwithstanding elements of good sense, was amplified in the case of *Herbert* v. *Lowns*,[4] decided

Herbert v. *Lowns*.

[1] 1848, 6 Moo. P.C. 341.
[2] 1870, L.R., 5 Q.B. 549.
[3] 3 Jac. I. Moor. 759; and cp. *Winchester's case*, 41 Trin. Eliz. K.B., 6 Co. 23 (a); 4 Burn. E.L. 60.
[4] 3 Car. I. 1 Ch. Rep. 24.

in the beginning of the reign of Charles I. "To a disposing memory," it was there affirmed, "it is necessary there be an understanding judgment, fit to direct an estate." In the time of Charles II.[1] we find a will made by "a sickly child, newly *pubes*, and without the knowledge of his curators," in the absolute favour of the nurse under whose care he had been, "reduced as inofficious." Next in point both of time and of importance comes the *cause célèbre* of *Dew* v. *Clark*.[2] The material facts were as follow. One Ely Stott died on 18th November 1821, leaving a widow, and a daughter by his first wife. The amount of his personal estate was nearly £40,000. By his will, dated 26th May 1818, Stott gave to his daughter, against whom he had conceived a violent and irrational prejudice, a life-interest only in a comparatively small portion of his property. Sir John Nicholl held that this unfounded antipathy had prevented the testator from properly appreciating his daughter's claims upon him, and pronounced against the will. In *Harwood* v. *Baker*,[3] Erskine, J., defined the criteria of testamentary capacity in the following terms: "In order to constitute a sound disposing mind, a testator must not only be able to understand that he is by his will giving the whole of his property to one object of his regard but . . . he must also have capacity to comprehend the extent of his property, and the nature of the claims of others whom, by his will, he is excluding from all participation in that property. . . . The protection of the law is in no cases more needed than it is in those where the mind has been too much enfeebled to comprehend more objects than one, and most especially when that one object may be so forced upon the attention of the invalid as to shut out all others that might require consideration." Except that it is limited too much to the particular facts of the case to constitute a general definition, this is an accurate statement of the law of testamentary capacity at the present day.[4]

Dew v. *Clark*.

Harwood v. *Baker*.

To the period under review we are also indebted for a development of the law as to "lucid intervals" and "insane

Lucid interval.

[1] Nisbet's *Doubts*, temp. Car. II. 206. Cp. also *Winchester's case*, Trin. 41 Eliz. K.B., 6 Co. 23 (a).

[2] 1826, 3 Add. 79-209, and Add. 123 *et seq.*; and cp. *Hopper will case*, 1865, 33 N.Y. 619; case of *Carlton Gates*, N.Y. Med.-Leg. Soc.'s Papers, 1st ser.; *Boyd* v. *Eby*, 1839, 8 W. 70; *Stanton* v. *Wetherwax*, 1853, 16 Barb. 259; *Moore's case*, 1 Littell 371; *Jumel*, S.C. rep.; *Morrison* v. *Smith*, 1855, 3 Brad. 209; *Thomson* v. *Quimby*, 1853, 2 Brad. 449; *Bonard's case*, N.Y. Med.-Leg. Soc.'s Papers, 3rd ser. 35.

[3] 1840, 3 Moo. P.C. 282. And cp. *Blewitt* v. *Blewitt*, 1833, 4 Hagg. E.R. 419; *Goldie* v. *Murray*, 1842, 6 Jur. 608; *Boyce* v. *Rossborough*, 1857, 6 H.L.C. 45.

[4] Cp. *Gillespie* v. *Gillespie*, Fac. Dec. Feb. 11, 1817; *Durling* v. *Loneland*, 1839, 2 Curt. 225; *Durnell* v. *Corfield*, 1844, 1 Rob. E.R. 51. See N.Y. Med.-Leg. Soc.'s Papers, 2nd ser. 62 (alcoholic insanity with similar symptoms).

delusions," although it was not settled in regard to either of these subjects till a later date. In *ex parte Holyland*[1] Lord Chancellor Eldon, dissenting from a view expressed by Lord Thurlow in the *Attorney-General* v. *Parnther*,[2] held that in order to supersede a commission it was not necessary that the mind should be restored to its original state. Lord Eldon said: "Suppose the strongest mind reduced by the delirium of a fever or any other cause to a very inferior degree of capacity, admitting of making a will of personal estate—to which a boy of the age of fourteen is competent; the conclusion is not just, that, as that person is not what he had been, he should not be allowed to make a will of personal estate. There may be frequent instances of men restored to a state of mind inferior to what they possessed before: yet it would not be right to support commissions against them." In spite of the facts that the analogy from the law of wills is no longer applicable, and that Lord Eldon is dealing with the question not of testamentary capacity but of supersedeas, this quotation contains the two elements which constitute the modern legal conception of "lucid interval,"—the one negative, viz. that complete restoration to mental vigour previously enjoyed is not necessary;[3] the other —which appears, however, to have been very faintly perceived by Lord Eldon himself—positive, viz. that competence to do the particular act in question is the test of a lucid interval. In *Towart* v. *Sellars*[4] the modern view was even more clearly foreshadowed—that a lucid interval, in so far as testamentary capacity is concerned, is the recovery of "a disposing mind." The definition of "insane delusion," although greatly expanded afterwards, also belongs in essence to this period. In *Mudway* v. *Croft*,[5] for instance, the Court adopted the following language from Dr. Ray's *Medical Jurisprudence* (at p. 137): "It is the departure from the natural and healthy character, temper, and habits (which constitutes a symptom of insanity), and in judging of a

ex parte Holyland.

A.-G. v. *Parnther.*

Towart v. *Sellars.*

Mudway v. *Croft.*

[1] 1805, 11 Ves. 10.

[2] 1792, 3 Bro. C.C. 441; *Mountain* v. *Bennett*, 1787, 1 Cox 353-357; *Greenwood* v. *Greenwood*, cit. 13 Ves. 89. Here the testator, having received from the hands of his brother a draught while he was suffering from fever, was seized with, and, in spite of his recovery in all other respects, ever afterwards dominated by, the idea that the latter had attempted to poison him. Under the influence of this morbid idea, he disinherited his brother. Two verdicts were passed upon the will, the one in its favour, the other against it. Ultimately the case was compromised. This will ought clearly to have been held invalid.

[3] In *Dyce Sombre* v. *Prinsep*, 1856, Deane, at p. 110, Sir John Dodson pointed out that, on the other hand, the mere cessation or suppression of the symptoms of insanity is not sufficient.

[4] 1817, 5 Dow P.C. 231.

[5] 1843, 3 Curt. 671, 676-7.

man's sanity it is consequently as essential to know what his habitual manifestations were as what his present symptoms are." The interest of this passage, which was thus adopted as a statement of the law of England, lies in the emphasis that it places upon the fact that the civil capacity of the insane is to be determined not by external standards of general application, but by the mental history and constitution of the person whose capacity is in question.[1]

In the period under consideration, important contributions were also made by the Courts to other points in the law of testamentary capacity.

Insanity *primâ facie* evidence only. *Cartwright* v. *Cartwright*.

It was laid down that insanity, though *primâ facie*,[2] was not conclusive[3] evidence of insanity, and that the presumption arising even from a verdict on an inquisition or from residence in an asylum might be rebutted.[4] *Cartwright* v. *Cartwright*[4] is a case of so remarkable a character that it deserves to be noticed in some detail. A., a patient in an asylum, made a will in which she left practically her whole fortune to her nieces. The circumstances under which this instrument was executed were as follows:—A. was supplied with pen, ink, and paper by the superintendent of the asylum to quiet and gratify her, though he considered her at the time quite incapable of making a will. Her hands were loosened from their ligatures for the purpose, and she was left alone while she performed the act, though watched by attendants through an aperture. There was certainly little in her conduct as deposed to by these witnesses to indicate a lucid interval. She was so agitated and furious that they were fearful she would attempt some mischief to herself. At first she wrote upon several pieces of paper, and got up in a wild and furious manner and tore them up and threw them in the fire. Then after walking up and down the room many times in a disordered manner, muttering and speaking to herself, she wrote the will in question. The will itself, however, was a perfectly steady and correct performance, entirely consistent with the testatrix's attachments, impressions,

[1] With express reference, it should be added, to the act done.

[2] *Hall* v. *Warren*, 1804, 9 Ves. 605, per Sir W. Grant, M.R., *re Watts*, 1837, 1 Curt. 594; *Snook* v. *Watts*, 1848, per Lord Langdale, M.R., 11 Beav. 105.

[3] *Rodd* v. *Lewis*, 1755, 2 Lee 176.

[4] *Cartwright* v. *Cartwright*, 1793-5, 1 Phill. 90-122, and *Clarke* v. *Lear*, Mar. 1791, cited 1 Phill. 119. Here the testator, a middle-aged man, being a lunatic, escaped from his keeper, and at a watering-place fell in love with a young lady, to whom in a will, rational on the face of it, he left a legacy of £1000. The will was set aside "as bottomed on insanity." *Coghlan* v. *Coghlan*, 19 Ves. 508; *Fulleck* v. *Allinson*, 1830, 3 Hagg. E.R. 527; and cp. *Willan* v. *Willan*, 1814, 2 Dow P.C. 283; and 9 Ves. 610; *Levy* v. *Lindo*, 1817, 2 Mer. 85.

and habits when in a sane condition, and written without a single mistake or blot. It was planned and completed by the testatrix without any assistance, and was afterwards recognised by her. Sir William Wynne decided for the validity of the will on the principle that "the strongest and best proof that can arise as to a lucid interval is that which arises from the act itself," which is "the thing to be first examined, and if it can be proved and established that it is a rational act rationally done," that is sufficient. This language has sometimes been treated as if it meant that the will itself, in a case of disputed testamentary capacity, is the best, if not the sole, criterion of the testator's competence. It does not appear, however, that Sir William Wynne intended to lay down any such rule,[1] and if he did it has since been repudiated.[2] It is, however, obvious, and has always been the law, that the manner in which a will is written and executed, and the contents of the will itself, coupled with the situation of the testator and the circumstances under which it was made, afford important evidence as to his capacity.[3] There would appear, indeed, to be no reason why—where the terms of a will are such as to exclude the supposition of the maker's sanity—its validity may not be decided against on that ground alone. On the other hand, it would not be sufficient to show that the dispositions of a will are imprudent and unaccountable.[4]

Will itself, how far evidence.

(2) 1848 to 1870.

(2) *From* 1848 *to* 1870.—During this period the law as to testamentary capacity diverged from the earlier rule and was governed by an external standard erected by Lord Brougham in the case of *Waring* v. *Waring*.[5] In this case the question at issue was the validity of the will of an elderly lady of an excessively penurious, eccentric, irritable, and quarrelsome character, who had disinherited her brother under an insane delusion that he had joined the Roman Catholic communion, towards which she entertained a strong aversion.

Waring v. *Waring*.

This case, therefore, fell clearly within the *ratio decidendi* in *Dew* v. *Clark* (*ante* p. 33), and the Judicial Committee of the Privy Council rightly pronounced against it. But in delivering the judgment of the Board, Lord Brougham took occasion to criticise the term *monomania*, of which Sir Alexander Cockburn had made such skilful use in defending Macnaughton in 1843 (see

Monomania.

[1] Cp. *Chambers* v. *Queen's Proctor*, 1840, 2 Curt. 415, 447.
[2] *Brogden* v. *Brown*, 1825, 2 Add. 441.
[3] Cp. 9 Ves. 610.
[4] *Burr* v. *Davall*, 9 Geo. I. 8 Mod. 59; cp. *Arbery* v. *Ashe*, 1828, 1 Hagg. E.R. 214; *Brouncker* v. *Brouncker*, 1812, 2 Phill. 57; *Scruby* v. *Fordham*, 1822, 1 Add. 74.
[5] 1848, 6 Moo. P.C. 341.

post "Rules in Macnaughton's Case"), and which was still exciting much interest and discussion. His lordship said: "If the being or essence which we term the mind is unsound on one subject, provided that unsoundness is at all times existing on that subject . . . it is only sound in appearance; for if the subject of the delusion be presented to it, the unsoundness, which is manifested by believing in the suggestions of fancy as if they were realities, would break out; consequently it is as absurd to speak of this as a really sound mind (a mind sound when the subject of the delusion is not presented), as it would be to say that a person had not the gout because his attention being diverted from the pain by some more powerful sensation, he for the moment was unconscious of his visitation. It follows, from hence, that no confidence can be placed in the acts, or in any act, of a diseased mind, however apparently rational that act may appear to be, or may in reality be." This language was thus—correctly it is submitted—paraphrased by Cockburn, C.J., in delivering the judgment of the Court of Queen's Bench in *Banks* v. *Goodfellow*:[1] "To constitute testamentary capacity, soundness of mind is indispensably necessary. But the mind, though it has various faculties, is one and indivisible. If it is disordered in any one of these faculties, if it labours under any delusion arising from such disorder, though its other faculties and functions may remain undisturbed, it cannot be said to be sound. Such a mind is unsound, and testamentary incapacity is the necessary consequence." As has been already observed, this was a mere dictum. But it exercised for a time a wide influence in various departments of the law of lunacy, criminal and civil alike.[2] Lord Penzance, then Sir J. P. Wilde, added to it the weight of his authority in *Smith* v. *Tebbitt*.[3] Here again there was ample proof of the existence of delusion closely connected with the subject-matter of the will. The testatrix thought that she had constant and direct communion with God; that she was the Holy Ghost, and that a Dr. Smith, who was the chief object of her bounty, to the detriment of relatives, was the Father; that with some other persons, not always the same, they constituted the Holy Trinity; and that some of the relatives whom she excluded were children of the devil. Lord Penzance, in an elaborate and conclusive judgment, decided against the validity of the will.

Criterion of *Waring* v. *Waring*.

Smith v. *Tebbitt*.

[1] 1870, L.R. 5 Q.B., at p. 559.

[2] Cp. *Hancock* v. *Peaty* (a case of marriage), 1867, L.R. 1 P. & D., at p. 351.

[3] 1867, L.R. 1 P. & D. 398, as well as in *Hancock* v. *Peaty*, *ubi sup.*

But he too went out of his way to deal with the metaphysical question raised by Lord Brougham. "There is no country in the world," he said,[1] "in which the law permits a larger exercise of volition than in England. But it requires, as a condition, that this volition should be that of a mind of natural capacity, not unduly impaired by old age, enfeebled by illness, or tainted by morbid influence. . . . I conceive the decided cases to have established this proposition; that if disease be once shown to exist in the mind of the testator, it matters not that the disease be discoverable only when the mind is addressed to a certain subject, to the exclusion of all others, the testator must be pronounced incapable. Further, that the same result follows though the particular subjects on which the disease is manifested have no connection whatever with the testamentary disposition before the Court."

(3) From 1870 downwards.

Banks v. *Goodfellow.*

(3) *From* 1870 *downwards.*—The metaphysical theory propounded by Lord Brougham in *Waring* v. *Waring* (*sup.* p. 37) was overthrown by the Court of Queen's Bench in *Banks* v. *Goodfellow.*[2] The judgment of the Court (Cockburn, C.J., Blackburn, Mellor, and Hannen, J.J.) was delivered by Chief-Justice Cockburn, and is one of the utmost importance and lucidity. The facts were as follows:—The testator, John Banks, made his will in 1863, in favour of his niece Margaret Goodfellow, who was his heir-at-law, and who lived with him, and was the object of his affection and regard. Banks had been confined as a lunatic for some months in 1841, and he remained subject to delusions that he was personally molested by a man, Featherstone Alexander, who had been long dead, and that he was pursued by evil spirits, whom he believed to be visibly present, and these delusions were shown to have existed between 1841 and the date of the will, and also between that date and his death in 1865. As to the testator's general capacity to manage his affairs, the evidence was contradictory, but it was admitted that at times he was incapable of making a will. The issue of the validity of the will was raised by an action of ejectment tried before Brett, J., at Cumberland assizes. The learned judge told the jury that the question was whether the testator, at the time of making the will, was capable of having such a knowledge and appreciation of facts, and was so far master of his intentions, free from delusions, as would enable him to have a will of his own in the disposition of his property,

[1] 1 P. & D., at p. 400. [2] 1870, L.R. 5 Q.B. 549.

and act upon it. The jury found that the will was valid. A new trial was applied for, principally on the ground that Brett, J., had misdirected the jury in not telling them—when he left to them the question whether at the time of making the will the testator was "free from delusions"—that though the delusions under which the testator had undoubtedly before laboured might not have been present to his mind at the time of making the will, yet if they were latent in his mind, so that if the subject had been touched upon the delusions would have recurred, he was of unsound mind, and therefore incapable of making a will. The Court held that the direction was practically right, for that it was immaterial whether the delusion remained latent or not at the time,[1] if the testator was otherwise competent to make a will, as neither of the delusions had, or could have had, any influence upon him in disposing of his property.[2]

Summary of reasoning in.

The reasoning by which the theory propounded by Lord Brougham was set aside may be summarised as follows:—The pathology of mental disease and the experience of insanity teach us that there are often delusions which, though the offspring of mental disease, and so far constituting insanity, yet leave the individual in all other respects rational and capable of transacting the ordinary affairs and fulfilling the duties and obligations incidental to the various relations of life. Even, therefore, when such partial unsoundness of mind exists, the question remains whether it is sufficient to take away testamentary capacity. In order to answer that question, we have to consider the ground on which insanity takes away testamentary capacity. Although the law of every civilised country concedes to the owner of property the right of disposing by will of his effects in whole or in part, a moral responsibility of no ordinary importance attaches to the exercise of the right thus given. A man's kindred have a reasonable and well-grounded expectation that on his death, if they survive him, his effects shall become theirs instead of being given to strangers. The Roman law, and the law of those countries which have followed it, secured the satisfaction of this expectation by providing that a fixed portion of the inheritance of a deceased person should go to his relations in the ascending

[1] Cockburn, C.J., said, however (*ubi sup.*, at p. 572), that where delusions were of such a nature as was calculated to influence the testator in making the particular disposition (as in *Waring* v. *Waring*, *sup.* p. 36, and *Smith* v. *Tebbitt*, *sup.* p. 37), a jury would not in general be justified in coming to the conclusion that the delusion still existing was latent at the time, so as to leave the testator free from any influence arising from it.

[2] But see *Creagh* v. *Blood*, 1845, 2 Jones & Lat., at p. 515.

and descending line. The English law, on the other hand, leaves everything to the unfettered discretion of the testator, on the assumption that, though in some instances caprice, or passion, or the power of new ties, or artful contrivance, or sinister influence may lead to the neglect of claims that ought to be attended to, yet the instincts, affections, and common sentiments of mankind may be safely trusted to secure on the whole a better disposition of the property of the dead, and one more accurately adjusted to the requirements of each particular case, than could be obtained through a distribution prescribed by the stereotyped and inflexible rules of a general law. To the exercise of testamentary power it is, therefore, in order to give effect to the *raison d'être* of the law, essential "that a testator shall understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect, and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties,—that no insane delusion shall influence his will in disposing of his property, and bring about a disposal of it which, if the mind had been sound, would not have been made. . . . If, therefore, though mental disease may exist, it presents itself in such a degree and form as not to interfere with the capacity to make a rational disposal of property, why, it may be asked, should it be held to take away the right? It cannot be the object of the legislator to aggravate an affliction in itself so great, by the deprivation of a right the value of which is universally felt and acknowledged. If it be conceded, as we think it must be, that the only legitimate or rational ground for denying testamentary capacity to persons of unsound mind is the inability to take into account and give due effect to the considerations which ought to be present to the mind of a testator in making his will, and to influence his decision as to the disposal of his property, it follows that a degree or form of unsoundness which neither disturbs the exercise of the faculties necessary for such an act, nor is capable of influencing the result, ought not to take away the power of making a will, or place a person so circumstanced in a less advantageous position than others with regard to this right." The law is the same with reference to unsoundness of mind arising from another cause, viz. want of intelligence occasioned by defective organisation, or by supervening physical infirmity, or the decay of advancing age, as distinguished from

Criterion established by *Banks* v. *Goodfellow*.

mental derangement, such defect of intelligence being equally a cause of incapacity.[1]

The law laid down by the Court of Queen's Bench in *Banks* v. *Goodfellow*[2] was followed by Sir James Hannen in his charge to the jury in the case of *Boughton* v. *Knight*,[3] where emphasis was placed on the fact that a capricious, frivolous, or even malevolent disposition of property is not invalid unless there is testamentary incapacity in the sense above explained; and in *Smee* v. *Smee*,[4] which illustrates a different proposition, viz. that a man may be capable of transacting business of a complicated and important character, and yet may be subject to delusions which unfit him for making a will; and by Mr. Justice Barnes in *Roe* v. *Nix*,[5] where a will made in an asylum by a Chancery lunatic, whose inquisition was never superseded, was found valid.

Boughton v. *Knight.*

Smee v. *Smee.*

Roe v. *Nix.*

It is noteworthy that the American law of testamentary capacity also both had its metaphysical period and subsequently adopted a criterion which is not only identical with our modern law, but has materially contributed to its formation. The American Courts drew, however, from the postulate that Courts cannot measure the understanding of a testator, a conclusion precisely opposite to that drawn by Lord Brougham and Lord Penzance, viz. that if a man has any reason at all, and is not an absolute idiot totally deprived of reason, he is the lawful disposer of his own property.[6] "To establish any standard of intellect or information," said Senator Verplanck in the *Lispenard case*,[7] "beyond the possession of reason in its lowest degree as in itself *essential* to legal capacity, would create endless difficulty, uncertainty, and litigation, would shake the security of property, and wrest from the aged and infirm that authority over their earnings or savings which is often their best security against injury and neglect." This case was, however, practically overruled in the Parish will case[8]—the *Banks* v. *Goodfellow* of American law—

Development of American law.

Parish will case.

[1] See observations of Lord Young on this case in *Ballantine* v. *Evans*, 1886, 13 Ct. of Sess. 4th series, at p. 667.

[2] *Sup.* p. 38.

[3] 1873, 3 P. & D. 64, and see *Burdett* v. *Thompson*, 1873, 3 P. & D., at p. 72, n. (1); and cp. *Sefton* v. *Hopwood*, 1857, 1 F. & F. 578. The unreliability of mere eccentricity as a sign of incapacity is well illustrated by the Bonard will case (Hamilton and Godkin's *Forensic Med.* ii. 35), where a will in which money was left to a philanthropic society for the suppression of cruelty to animals, and especially cats, was explained by the fact that the testator was a believer in metempsychosis.

[4] 1879, 5 P.D. 84, and cp. *Parker* v. *Felgate*, 1883, 8 P.D. 171; *Wingrove* v. *Wingrove*, 1885, 11 P.D. 81; *Murfett* v. *Smith*, 1887, 12 P.D. 116.

[5] 1893, Prob. 55.

[6] *Stewart* v. *Lispenard*, 1841, 26 Wendell 255.

[7] *Ubi sup.*, at p. 302.

[8] 1862, *Delafield* v. *Parish*, 25 N.Y. 9. In *Sheldon* v. *Dow*, 1883, 1 Dem. N.Y. 503, a reason is given for support-

where it was held that a testator must have sufficient capacity to comprehend perfectly the condition of his property, his relation to the persons who were or should or might have been the objects of his bounty, and the scope and bearing of the provisions of his will, and that he must have sufficient active memory to collect in his mind, without prompting, the particulars or elements of the business to be transacted, and to hold them in his mind a sufficient length of time to perceive at least their active relation to each other, and to be able to form some rational judgment in regard to them.

(*b*) Statement of Law and Practice.[1]

Definition of testamentary capacity.

Testamentary capacity consists in the possession by the testator[2] of a memory sufficiently active to recall (*a*) the nature and extent of his property, and (*b*) the persons who have claims upon his bounty, and a judgment and will sufficiently free from the influence of morbid ideas or external control to determine the relative strength of these claims. It will be observed that this definition of testamentary capacity does not make it essential that the testator should exercise the faculties referred to at the

ing testamentary capacity in cases where capacity to enter into other contracts might be held not to exist, viz. that people meditate upon their testamentary intentions more than upon other subjects; and cp. *Van Alst* v. *Hunter*, 1821, 5 John. Ch. N.Y. 160.

[1] As to the old practice in the Ecclesiastical Courts, see Shelf. Lun. chap. vii.

Critical period.

[2] The moment of execution is the critical period—*Billinghurst* v. *Vickers*, 1810, 1 Phill. E.R. 193; *Wood* v. *Wood*, 1811, *ib.* 357; *Brouncker* v. *Brouncker*, 1812, 2 Phill. E.R., at p. 60; and cp. *Thomson* v. *Tate*, 1807, 5 Pat. App. 176, as to deeds. It follows (1) that a will executed when the testator is of unsound mind cannot be rendered valid by his subsequent recovery—*Arthur* v. *Bokenham*, 6 Ann. 11 Mod. 157; and (2) that part of a will may be admitted to probate and part rejected where the testator was of sound mind at the execution of the former and of unsound mind at the execution of the latter—*Wood* v. *Wood*, *ubi sup.*; *Brouncker* v. *Brouncker*, *ubi sup.* See Scotch case of *Graeme* v. *Graeme's Trs.* 1869, 7 M. 1062, as to effect of insanity of one of two parties to a mutual *mortis causâ* settlement. If *Parker* v. *Felgate*, 1883, 8 P.D. 171, is good law, where a will is prepared in accordance with a testator's instructions, it will be valid, not only if at the time of execution he could have understood its clauses if they had been put to him, and was capable of understanding and did understand he was executing the will for whose preparation the instructions had been given, but even if the latter condition existed without the former. *Aliter*, however, if the testator merely gave instructions for the preparation of a will, and signed it without knowing what its provisions were. Cp. *Hastilow* v. *Stobie*, 1865, 1 P. & D. 64, overruling *dicta* of Sir Creswell Creswell in *Middlehurst* v. *Johnson*, 1860, 30 L.J. Prob. 14, and *Cunliffe* v. *Cross*, 1863, 3 Sw. & T. 36. And see *Haddock* v. *Trotman*, 1857, 1 F. & F. 31; and the Scotch case of *Laidlaw* v. *Laidlaw*, 1870, 8 R. 882, where a will was reduced because the testator was at the time of execution incapable of understanding its effect, from the influence of opiates given to lessen the pain of a disease from which he was suffering, although the draft was prepared for and considered by him six months before. Before the Wills Act (1 Vict. c. 26) instructions for a will of personal estate, if reduced into writing before the testator's death, might operate as a will, and wills executed in accordance with such instruc-

moment of execution, but only that he must possess them. The second case, put by Sir James Hannen in *Parker* v. *Felgate*,[1] viz. that of a testator whose will had been prepared in accordance with previous instructions, and who at the moment of execution knew that he was giving effect to these instructions, and could have understood the provisions of the will if they had been put to him clause by clause, would therefore fall within it. The English authorities for the proposition under discussion are examined *ante* pp. 32-36, 38. The following passages from American and Scotch cases may be added.

The disposing mind.

In *Converse* v. *Converse*,[2] Redfield, J., said that the testator "must undoubtedly retain sufficient active memory to collect in his mind, *without prompting*, particulars or elements of the business to be transacted, and to hold them in his mind a sufficient length of time to perceive at least their more obvious relations to each other, and be able to form some rational judgment in relation to them." It is conceived that in the words *without prompting* this statement goes beyond English law.

Harrison v. *Rowan.*

Again, in *Harrison* v. *Rowan*,[3] Washington, J., said that the testator must be capable of making his will "with an understanding of the nature of the business in which he is engaged; a recollection of the property he means to dispose of; of the persons who are the objects of his bounty, and the manner in which it is to be distributed between them. It is not necessary that he should view his will with the eye of a lawyer and comprehend its provisions in their legal form. It is sufficient if he has such a mind and memory as will enable him to understand

tions have been held good, although the testator became of unsound mind before they could be duly executed. Cp. *Moore* v. *Hacket*, 1755, 2 Lee 147; *Sellars* v. *Garnett*, 1746, 1 Phill. 430; *Fulleck* v. *Allinson*, 1830, 3 Hagg. 527; *Seeman* v. *Seeman*, 1752, 1 Lee 180.

The will of a testator who subsequently becomes, and dies, lunatic has—in accordance with the provision in the Wills Act (1 Vict. c. 26) that, if a contrary intention appears in the instrument, the general rule as to a will speaking from the testator's death is not to apply—been held to speak from its date where any other construction would defeat the testator's intention.[1] But a conditional legacy will not be upheld on this principle where the condition has been defeated by the action of the Court in Lunacy.[1]

[1] 1883, 8 P.D., at p. 174.

[2] 1849, 21 Verm., at p. 170. The will need not *originate* with the testator, *Constable* v. *Tufnell*, 1833, 4 Hagg. E.R. 465.

[3] 1820, 3 Wash. 585, followed as regards capacity to make a power of attorney in *Hall* v. *Unger*, 1867, 2 Abb. U.S. (reported on appeal as *Dexter* v. *Hall*, 1872, 15 Wall. 9). Cp. also *Blanchard* v. *Nestle*, 1846, 3 Denio 37; *Boyd* v. *Eby*, 1839, 8 Watts R. 66; and *Delafield* v. *Parish*, 1862, 25 N.Y. 9; a definition of a testator's capacity substantially identical with that given in the text has found its way into the laws of some of the American States.

[1] *Wheeler* v. *Thomas*, 1860, 7 Jur. N.S. 599.

[1] *Re Hartley's Trusts*, 1878, 26 W.R. 590.

the elements of which it is composed—the disposition of the property in its simple forms."

Morison v. *Maclean's Trustees.*

In *Morison* v. *Maclean's Trustees*[1] the late Lord President Inglis (then Lord Justice-Clerk) said that "The test of capacity to execute a settlement . . . cannot possibly be stated without reference to the settlement itself, because a man may have power of intellect to enable him to do one thing—to make one kind of mental exertion—and yet may be totally incapable of making another." Again, in *Nisbet* v. *Nisbet*,[2] Lord Ardmillan said: "We must admit that partial mental disorder may co-exist with such an amount of mental capacity as can sustain a simple and rational act or writing. We must inquire into the nature and extent of any partial disorder which is discovered, and if there be any mental delusion, we must ascertain its character and see if it is calculated to affect the act or writing we are considering."

Nisbet v. *Nisbet.*

Ballantyne v. *Evans.*

Once more, in *Ballantyne* v. *Evans*,[3] the present Lord Justice-Clerk (Lord Kingsburgh), in approving the doctrine of *Banks* v. *Goodfellow*,[4] said: "I think that this principle, to the extent to which it has as yet been carried, is founded on good sense, and has support from the more recent researches into the phenomena of mental derangement. . . . My own opinion has always been that in questions in this difficult branch of social jurisprudence generalisation is to be avoided, for we deal with matters beyond our cognisance, with clues and ramifications we are unable to trace or to follow. Each case must be considered in its own circumstances, without attempt to deduce general rules as a guide for others."

Lord Young's criticism of *Banks* v. *Goodfellow.*

Lord Young, however, while agreeing with the rest of the Court, stated that if the matter had been *res integra* he should have come to a different conclusion. His remarks may be compared with those of Cockburn, C.J., in *Banks* v. *Goodfellow*[5] (*ante* p. 39). Briefly stated, Lord Young's view was that while the capacity of a lunatic or idiot to enter into simple contracts—*e.g.* to go into a shop and buy food—must be upheld, it is quite another thing to say that he is by his will to be at liberty to dispose "of the territory of this country or a portion of it, or the property in this planet, declaring directions which are to be fol-

[1] 1862, 24 D. 625, 631.
[2] 1871, 9 M. 937, 949.
[3] 1886, 13 Ct. of Sess., 4th series, at p. 666, and cp. *Laidlaw* v. *Laidlaw*, 1870, 8 M. 882; *Maitland's Trs.* v. *Maitland*, 1871, 10 M. 79; *Campbell* v. *Davidson*, 1827, 4 Muir 448; *Hogg* v. *MacNeill*, 1828, 4 Muir 448; *White* v. *Ballantine*, 1823, 1 Shaw 472; *Laing* v. *Bruce*, 1838, 1 D. 39.
[4] 1870, L.R. 5 Q.B. 549.
[5] *Ib.*

lowed after a man has ceased to be a proprietor and ceased to be an inhabitant of the planet altogether." The power to make a will is not a question of natural right at all, but of positive law; after a man ceases to be proprietor, at his death, there is always a law of intestacy to dispose of his property, and when that law is interfered with, the interference operates as a displacement of the right which the law confers on somebody. Lord Young concludes, therefore, that there is a distinction between a will and the ordinary transactions and business of a man's life.

The line which Lord Young proposes to draw, however, between testamentary and contractual power is, it is respectfully submitted, an illogical and arbitrary one. It is conceded by the learned Judge that insanity may co-exist with capacity for all the ordinary transactions of life, and yet the existence of any degree of insanity is to vitiate a will, not because the matters with which it deals are necessarily more complex than ordinary business transactions (in very many cases they are much less so), but because it enables a man to operate on property after his death. This may be a reason for withholding from everybody the right to dispose of property by will. But it does not constitute any justification for denying it only to a particular class who are not incapable of entering into valid and binding contracts or marriages.

Difference as to wills and gifts, etc.

It may be convenient here to deal with the law of undue influence in regard to wills. There is an important difference between the law as to undue influence in regard to wills and the law of undue influence as to gifts and other transactions *inter vivos*.

As regards wills. *Hall* v. *Hall*.

The degree of undue influence which will vitiate a *will* has been well described in *Hall* v. *Hall*:[1] "To make a good will a man must be a free agent. But all influences are not unlawful. Persuasion, appeals to the affections, or ties of kindred, to a sentiment of gratitude for past services, or pity for future destitution, or the like—these are all legitimate, and may be fairly pressed on a testator. On the other hand, pressure of whatever character, whether acting on the fears or the hopes, if so exerted as to overpower the volition without convincing the judgment, is a species of restraint under which no valid will can be made. Importunity or threats, such as the testator has not the courage to resist, moral command asserted and yielded to for the sake of peace and quiet, or of escaping from distress of mind or social discomfort—these, if carried to a degree in which

[1] 1872, 2 P. & D. 482.

the free play of the testator's judgment, discretion, or wishes is overborne, will constitute undue influence, though no force is either used or threatened. In a word, a testator may be led, not driven; and his will must be the offspring of his own volition, and not the record of some one else's." [1]

As regards gifts, etc.

In the case of *gifts or other transactions inter vivos*,[2] on the other hand, courts of equity consider that natural influence, exerted by those who possess it to obtain a benefit for themselves, is an undue influence, unless the party benefited can show affirmatively that the other party to the transaction was able to form an absolutely free and unfettered judgment.

The differences,[3] then, between the undue influence which destroys testamentary capacity and that which makes a gift voidable at the option of the donor appear to be these: (1) In the case of a will natural influence is legitimate; in the case of a gift *inter vivos* the exercise of natural influence raises a presumption of undue influence; and (2), consequently, in the case of a will the burden of proving undue influence rests on the person who asserts that it was exercised, and *undue influence cannot be presumed*;[4] in the case of a gift, where at or shortly before the execution of the gift the relationship between the donor and donee had been such as to raise a presumption that the donee had influence over the donor, the Court will set the gift aside unless it is proved to be the result of a free exercise of the donor's will.

In addition to the considerations above mentioned there is another reason for the different rules that apply to wills and to gifts *inter vivos*, which was very clearly stated by Lord Penzance in *Parfitt* v. *Lawless*.[5] In the case of gifts, contracts, or other transactions *inter vivos*, there is a transaction in which the person benefited at least takes part, whether he unduly urges his influence or not, and in calling upon him to explain the part he took and

[1] As to undue influence in connection with marriage contracts, etc., see *ante* p. 20, and *post* p. 49.

[2] Cp. *Williams* v. *Goude*, 1828, 1 Hagg. E.R. 577, 611; *Marsh* v. *Tyrrell*, 1828, 2 Hagg. E.R. 84, 111; 1832, S.C. 3 Hagg. E.R. 471; *Archer* v. *Hudson*, 1844, 7 Beav. 551; *Walmesley* v. *Booth*, 1739, 2 Atk. 25-27; *Saunderson* v. *Glass*, 1742, *ib.* 297; *Cray* v. *Mansfield*, 1749-50, 1 Ves. sen. 379; *Pierce* v. *Waring*, cit. *ib.* 380; *Oldham* v. *Hand*, 1745, 1751, 2 Ves. sen. 259; *Middleton* v. *Forbes*, 1787, 1 Hagg. E.R. 394; *Barton* v. *Robins*, 1769, 3 Phill. 455 n.; *Maccabe* v. *Hussey*, 1831, 2 Dow & C. P.C. 440; *Segrave* v. *Kirwan*, 1828, Beatty 157-66; *Gibson* v. *Jeyes*, 1801, 6 Ves. 266; *Griffiths* v. *Robins*, 1818, 3 Madd. 191.

[3] In some of the old cases these differences are not so clearly distinguished. Cp. *Middleton* v. *Forbes*, 1787, 1 Hagg. E.R. 398; *Paske* v. *Ollat*, 1819, 2 Phill. 323; *Dodge* v. *Meech*, 1828, *ib.* 612; *Ingram* v. *Wyatt*, 1828, *ib.* 384.

[4] *King* v. *Farley*, 1828, 1 Hagg. E.R. 502; *Brydges* v. *King*, 1828, *ib.* 236.

[5] 1872, 2 P. & D. 469.

the circumstances that brought about the gift or obligation, the Court is plainly requiring of him an explanation within his knowledge. But in the case of a legacy under a will the legatee may have, and in point of fact generally has, no part in or even knowledge of the act, and to cast upon him, on the bare proof of the legacy and his relation to the testator, the burden of showing how the thing came about, and under what influences or with what motive the legacy was made, or what advice the testator had, professional or otherwise, would be to cast a duty on him which in many, if not in most, cases he could not possibly discharge.

An examination of a few of the cases relating to undue influence may suffice to illustrate the principles above stated. And first, *as to wills.* In *Parfitt* v. *Lawless*[1] the plaintiff, a Roman Catholic priest, had resided with the testatrix (who bequeathed to him the bulk of her property) and her husband many years as chaplain, and for a part of the time as confessor. He was confessor at the time when the disputed will was made. There was no evidence *produced by the defendant* that the plaintiff had interfered in the making of the will, or had exercised any coercion, dominion, or importunity over the testatrix in regard to her will. Moreover, it was *not shown by the defendant* that in the common affairs of life or business the testatrix was under the plaintiff's control. Lord Penzance held that there was no evidence of undue influence to go to the jury. His lordship held that undue influence could not be inferred from the relations between the two, combined with the disposal of the property, and that it was incumbent on those who pleaded undue influence in opposition to the will to prove it affirmatively.

(1) As to wills. *Parfitt* v. *Lawless.*

In *Parker* v. *Duncan*,[2] the person propounding the alleged last will of a testatrix was the Chairman of the Board of Guardians of the Union in whose workhouse infirmary the testatrix was at the time the alleged will was made, and in which she died.

Parker v. *Duncan.*

[1] 1872, L.R. 2 P. & D. 462. The judgment in this case also contains a lucid exposition of the law as to the nature and limits of the question whether there is in any case evidence to go to the jury, *ubi sup.* cit. p. 471. Cp. *Wingrove* v. *Wingrove*, 1885, 11 P. D. 81.

[2] 1890, 62 L.T. 642. Cp. *Ross* or *Russ* v. *Chester*, 1828, 1 Hagg. E.R. 227; *Paine* v. *Hall*, 1812, 18 Ves. 475; *Hicks* v. *Parr*, 1789, cit. *Trimlestown* v. *Lloyd*, 1827, 1 Bligh N.R. 449, 458, 476, and in *Walker* v. *Stephenson*, 1801, 3 Esp. 284; 4 Esp. 51, and in *Goodtitle* v. *Braham*, 1792, 4 T.R. 497; *Filmer* v. *Gott*, 1774, 4 Br. P.C. 230; *Fane* v. *Duke of Devonshire*, 1718, 6 Br. P.C. 137; *Wheeler* v. *Alderson*, 1831, 3 Hagg. E.R. 574-616; *Bonner* v. *Mathews*, 1832, Shelf. Lun. 424; *Bird* v. *Bird*, 1828, 2 Hagg. E.R. 142; *Mynn* v. *Robinson*, 1828, *id.* 179; *Moss* v. *Brander*, 1811, 1 Phill. 254; *Mackenzie* v. *Handasyde*, 1829, 2 Hagg. E.R. 211; *O'Conner* v. *Rempt*, 1878, 29 N.J. Eq. 156.

The plaintiff obtained from a solicitor a form of will, filled it up in pencil, and refused to allow the solicitor to go to the deceased. Having got the form of will, the plaintiff called on a friend of his own, and with him went to the infirmary, and the testatrix put her mark to the will in their presence and that of a nurse.

The plaintiff knew nothing of the testatrix until she was admitted into the workhouse four or five weeks before her death; and she was deeply indebted to the defendants, and had made in their favour a previous will. No good reason was shown why she should wish to revoke it. The jury found that the will was procured by the undue influence of the plaintiff. Here there was not merely, as in *Parfitt* v. *Lawless*,[1] the existence of a relationship between the plaintiff and the testatrix which would enable the former to exercise undue influence over the latter, but a strong body of circumstantial evidence to show that that influence had in fact been exercised. That evidence was partly positive and partly negative. To the former category belonged the incidents relating to the preparation and execution of the will; the latter consisted of the plaintiff's failure—always a circumstance of great suspicion in the case of a beneficiary who expects that a will is about to be made in his favour, and *a fortiori* if he is busying himself about its preparation and execution [2]—to see that the testatrix received proper and independent advice. There were also findings of testamentary incapacity and want of knowledge and approval of the contents of the will.

Influence to be "undue" must amount to "coercion." The coercion [3] may, of course, be of different kinds; it may be in the grossest form, such as actual confinement, or a person in the last days or hours of life "may have become so weak and feeble that a very little pressure will be sufficient to bring about the desired result, and it may even be that the mere talking to him at that stage of illness, and pressing something upon him, may so fatigue the brain that the sick person may be induced for quietness' sake to do anything. This would equally be coercion, though not actual violence." But "if the act is shown to be the result of the wish and will of the testator at the time, then, however it has been brought about . . . though you may condemn (him) for having such a wish, though you may condemn any person who has endeavoured to persuade,

[1] 1872, L.R. 2 P. & D. 462.

[2] *Fulton* v. *Andrew*, 1875, L.R. 7, Eng. and Ir. App. Cas., at p. 461.

[3] Per Sir James Hannen in *Wingrove* v. *Wingrove*, 1885, 11 P.D. 82.

and has succeeded in persuading (him) to adopt that view, still it is not undue influence."

Wingrove v. *Wingrove*

In *Wingrove* v. *Wingrove*[1] Sir James Hannen illustrated the principle that coercion is necessary to undue influence in the following way. The facts of the case are not reported. "A young man may be caught in the toils of a harlot, who makes use of her influence to induce him to make a will in her favour, to the exclusion of his relatives. It is unfortunately quite natural that a man so entangled should yield to that influence, and confer large bounties upon the person with whom he has been brought into such relation: yet the law does not attempt to guard against such contingencies. A man may be the companion of another, and may encourage him in evil courses, and so obtain what is called an undue influence over him, and the consequence may be a will made in his favour. But that again, shocking as it is, perhaps even worse than the other, will not amount to undue influence. . . . Very immoral considerations, either on the part of the testator or of some one else offering them, do not amount to undue influence, unless the testator is in such a condition that if he could speak his wishes to the last, he would say, 'This is not my wish, but I must do it.'"

(2) Gifts and transactions *inter vivos*.

There are two classes of cases of undue influence in relation to gifts and transactions *inter vivos*.

Two classes of cases.

First, unfair conduct.

The first consists of those cases in which there has been some unfair and improper conduct, some coercion from outside, some overreaching, some form of cheating, and generally, though not always, some personal advantage obtained by a donee placed in some close and confidential relation to the donor.[2] Of this class of cases *Lyon* v. *Home*[3] may be taken as an instance. Mrs. Lyon, a widow, aged seventy-five, within a few days after seeing one Daniel Home, who claimed to be a spiritual medium, was induced from her belief that she was fulfilling the wishes of her deceased husband, conveyed to her through Home, to adopt him as her son and transfer to him £24,000; to make her will in his favour; afterwards to give him a further sum of £6000; and also to settle upon him, subject to her life interest, the reversion of £30,000,—these gifts being made without consideration and without power of revocation. Giffard, V.-C., decided that the gifts were fraudulent and void.

Lyon v. *Home*.

In the second class of cases, above referred to, the relations

[1] 1885, 11 P.D. 81.

[2] Per Lindley, L.J., in *Allcard* v. *Skinner*, 1887, 36 Ch.D., at p. 181.

[3] 1868, L.R. 6 Eq. 655-682, and cp. *Greenwood* v. *Cline*, 1879, 7 Oreg. 17.

Second, relationship creating presumption of undue influence.

between the donor and the donee have at or shortly before the execution of the gift been such as to raise a presumption that the donee had influence over the donor; here the law throws upon the donee the burden of proving that he has not abused his position, and that the gift to him has not been brought about by any undue influence upon his part. In cases of this description —unless where gifts of a comparatively small amount only are at stake[1]—the donee must show that the donor had independent advice, and was removed from his influence when the gift was made.[2] A typical case of this class is *Allcard* v. *Skinner*.[3]

Allcard v. *Skinner*.

In 1868 Miss Allcard, a young lady of property, was introduced by the Rev. D. Nihill, her spiritual adviser, to Miss Skinner, the lady superior of a sisterhood, and became an associate of the body. Mr. Nihill was one of the founders, and also the spiritual director and confessor of the sisterhood—an association of ladies who devoted themselves to good works. In 1871 Miss Allcard, having passed through the grades of postulant and novice, became a professed member of the sisterhood, and bound herself to observe, *inter alia*, the rules of poverty, chastity, and obedience, by which the sisterhood was regulated, and which were made known to her when she became an associate. These rules were drawn up by Mr. Nihill. The rule of poverty required the member to give up all her property, either to her relatives, or to the poor, or to the sisterhood itself, but the forms in the schedule to the rules were in favour of the sisterhood. The rule of obedience required the member to regard the voice of her superior as the voice of God. The rules also enjoined that no member should seek the advice of any *extern* without the superior's leave. Miss Allcard, within a few days after becoming a member, made a will bequeathing all her property to Miss Skinner, and in 1872 and 1874 transferred to that lady several large sums of money and railway stock. In May 1879 she left the sisterhood, and immediately revoked her will, but made no demand for the return of her property till 1885, when she commenced an action against Miss Skinner for that purpose, on the ground that she had disposed of her property while acting under the paramount and undue influence of the latter, and without any separate and

[1] Cp. *Allcard* v. *Skinner*, *ubi sup.*, at p. 185; *Rhodes* v. *Bate*, 1865-66, L.R. 1 Ch. 258.

[2] Cp. *Huguenin* v. *Baseley*, 1807, 14 Ves. 273; *Bainbrigge* v. *Browne*, 1881, 18 Ch.D. 188; and see *Dufaur* v. *Croft*, 1840, 3 Moo. P.C. 136; *Morley* v. *Loughnan*, 1893, 1 Ch. 736; *Liles* v. *Terry*, 1895, 2 Q.B. 679.

[3] *Ubi sup.*; and cp. *Swinfen* v. *Swinfen*, 1858, 1 F. & F. 584; *Osmond* v. *Fitzroy*, 1731, 3 P.W. 129.

independent advice. It was held by the Court of Appeal that although Miss Allcard had voluntarily, and while she had independent advice, entered the sisterhood with the intention of devoting her fortune to it, yet as, at the time when she made the gifts, she was subject to the influence of Miss Skinner and Mr. Nihill and to the rules of the sisterhood, she would have been entitled on leaving the association to claim restitution of such part of her property as was still in Miss Skinner's hands (it was conceded on the appeal that as regards money given by Miss Allcard to Miss Skinner, and applied by the latter to the charitable purposes which they were both equally anxious to promote, there was no equitable claim to restitution), if her own delay and acquiescence[1] since leaving the sisterhood had not barred her claim.

Intoxication will invalidate a will if it is sufficiently pronounced to destroy testamentary capacity in the sense above defined, *ante* p. 42.[2] Intoxication, etc.

The testamentary capacity of *aphasics*, deaf and dumb mutes, and hypnotised persons depends on the same considerations.[3] Aphasics, etc.

An insane delusion is not merely an unfounded, though colourable, suspicion:[4] nor even a belief which no rational person would have entertained:[5] it is a persistent and incorrigible belief of things as real which exist only in the imagination of the patient,[6] and which no rational person can conceive that the patient when sane would have believed.[7] Insane delusions.

In *Mudway* v. *Croft* the following passage from Dr. Ray's *Medical Jurisprudence* (at p. 137) is expressly adopted: "It is the departure from the natural and healthy character, temper, and habits (which constitutes a symptom of insanity), and in judging of a man's sanity, it is consequently as essential to know what his

[1] Cotton, L.J., dissented on this point, and held that Miss Allcard's claim was not barred by delay.

[2] Cp. Co. Rep. iv. 123 (b) n.; *Ayrey* v. *Hill*, 1824, 2 Add. 209, where the evidence to be adduced in such cases is discussed; and the American cases of *Peck* v. *Cary*, 1863, 27 N.Y. 9, and *Julke* v. *Adam*, 1863, N.Y. Surr., 1 Redf. 454.

[3] Cp. *Dickenson* v. *Blisset*, 1754, 1 Dick. 268; *M'Diarmid* v. *M'Diarmid*, 1828, 3 Bli., N.S., 374; *re Owston*, 1862, 2 Sw. & Tr. 461; *re Geale*, 1864, 3 Sw. & Tr. 431; Hofhauer, *Traité de Médicine Légale*, Paris, 1827; Billod, *Ann. Med. Psych.* tom. xviii.; Tylor, *Early Hist. of Mankind*, 28; *Brook's case*, *Times*, May 27, 1870; *Ann. d'Hyg. Pub.* vol. 31, p. 430. Incapacity may spring from physical disease—*Fraser's will*, 1880, 42 Mich. 206 (a remarkable case of incapacity produced by cancer); *Mairs* v. *Freeman*, 1877, 3 Redf. 181; *Blakely's will*, 1881, 48 Wisc. 294 (paralysis); *Brown* v. *Riggin*, 1880, 94 Ill. R. 660.

[4] *Chambers* v. *Queen's Proctor*, 1840, 2 Curt., at p. 448.

[5] Per Lord Brougham in *Waring* v. *Waring*, 1848, 6 Moo. P.C., at p. 353 (*v. ante*), overruling Sir John Nicholl in *Dew* v. *Clark*, 1826, 3 Add., at p. 90.

[6] Lord Brougham, *ubi sup.*

[7] *Mudway* v. *Croft*, 1843, 3 Curt. 671, implicitly disposing of the dictum of Lord Campbell in *Ditchburn* v. *Fearn*, 1842, 6 Jur. 201.

habitual manifestations were as what his present symptoms are." This doctrine has been applied with fair consistency.[1]

Effect of insanity on testamentary capacity.

There remains to be considered the question of the effect of insanity on testamentary capacity. The existence of insanity in the ordinary sense of the term as an affection primarily of the intellectual faculties,[2] at the time when a testator executes his will, creates a presumption against testamentary capacity. But this presumption may in any case be rebutted by evidence of a lucid interval at the critical period (*ante* p. 42, note 2), or that the insanity and delusions of the testator were irrelevant to the subject-matter of his will, or insufficient to prevent the exercise of a disposing memory, judgment, and will at the time when the disputed instrument was made.

Inquisition *de lunatico inquirendo.*

An inquisition *de lunatico inquirendo* is presumptive,[3] but not conclusive[4] evidence of testamentary incapacity. *Roe* v. *Nix*[4] offers an interesting illustration of this statement. In this remarkable and extremely narrow case, which was tried by Mr.

[1] Cp. *Austen* v. *Graham*, 1854, 8 Moo. P.C. 493, per T. Pemberton Leigh, 500-1; *Dyce Sombre* v. *Prinsep*, 1856, Deane 22; and *Fulleck* v. *Allinson*, 1830, 3 Hagg. E.R. 527-47.

[2] As to moral insanity, see *post* p. 55.

[3] *Hall* v. *Warren*, 1804, per Sir William Grant, M.R., 9 Ves. 609; *Clement* v. *Rhodes*, 1825, 3 Add. 37; *re Watts*, 1837, 1 Curt. 594; *Snook* v. *Watts*, 1848, 11 Beav. 105, per Lord Langdale, M.R.

[4] *Rodd* v. *Lewis*, 1755, 2 Lee 176; *Roe* v. *Nix*, 1893, Prob. 55; *Brady* v. *M'Bride*, 1885, 39 N.J. Eq. 495, and cp. *Eddy's case*, 1880, 32 *ib.* 701; *Rawdon* v. *Rawdon*, 1857, 28 Ala. 565; *Banker* v. *Banker*, 1875, 63 N.Y. 409. The effect of an inquisition *de lunatico inquirendo* on the acts of the lunatic so found has not received much judicial elucidation, and now that an inquisition is practically confined to the question of the lunatic's capacity at the time of the inquisition, it is not likely to come very frequently before the Courts. As regards testamentary capacity no difficulty arises. The validity of the will does not require to be determined till after the lunatic's death, when the commission is at an end, and the question then comes to be whether the presumption created by the inquisition can be rebutted. As regards other acts by a lunatic so found, the case is not so simple. The fact that an inquisition is only presumptive evidence of lunacy does not, it is conceived, interfere with the right of the committees of a lunatic to prevent him from entering into contracts or other onerous obligations. As between him and them they would be entitled to say that the presumption against him stands till it is rebutted by traverse or supersedeas. But the issue might arise in various ways. Suppose, for instance, that a lunatic, under sec. 116 of the Act of 1890, *post*, contracted with, or married, another party acting *bonâ fide* and without notice, and that party insisted on holding him to his bargain, or upon setting up the validity of the marriage, the case would, it is submitted, have to be decided on the general principles as to the contracts (*ante* p. 14) and marriage (*ante* p. 24) of the insane. In the former case it is conceived that the contract would be binding (subject to the controlling power of the Court in Lunacy as to maintenance), notwithstanding the lunacy, since *ex hypothesi* the other contracting party was ignorant of it; in the latter, the presumption arising from the inquisition would, unless displaced, be fatal to the marriage, since the law treats marriage as a state, and not merely as a contract, and incapacity to enter into it, whether the other party has or has not notice of the fact, would suffice to set it aside. In the case of the committal of a crime by a lunatic so found, the presumption arising from the inquisition should, it would seem, operate in the lunatic's favour.

Justice Gorell Barnes and a special jury, at the end of 1892, the point at issue was whether certain testamentary documents executed by a Chancery lunatic, Miss Ellen Roe, were or were not vitiated by the alleged mental unsoundness of the testatrix. The evidence was very evenly balanced. On the one hand, Miss Ellen Roe had been found lunatic by inquisition; no supersedeas had been obtained. The Lord Chancellor's visitors were of opinion that she did not possess testamentary capacity at the critical period; the deceased lady had proposed to bequeath her property to the Dean of Norwich, and to leave legacies to the Archbishop of Canterbury and the Lord Chancellor, and a strong effort was made to show that she was under the influence of an insane aversion towards her sisters, and that the case, therefore, came within the *ratio decidendi* of *Dew* v. *Clark*[1] and similar authorities. On the other hand, it was contended, and evidence was adduced to prove, that the only form of insanity from which Miss Roe had ever suffered was temporary alcoholism, and that her aversion to her sisters was at first merely the indifference caused by long absence from home, and afterwards the dislike which the inmate of an asylum is apt to feel to the persons whom she supposes to have put her there. It was also proved that one of the Chancery visitors had expressed an opinion that Miss Roe might be allowed to make a will—although, of course, without undertaking to say that it would be valid—and that the actual preparation and execution of the disputed instrument were preceded and accompanied by every possible precaution on the part of testatrix's solicitor. In the event the jury pronounced in favour of Miss Roe's testamentary capacity,—a conclusion which it was possible for reasonable men to adopt under the circumstances.

Residence in an asylum. Lucid interval.

The presumption arising from residence in an asylum, or from other *prima facie* evidence of insanity, may be rebutted by proof of a lucid interval, or that the insanity or delusions were irrelevant or immaterial.

Cartwright v. *Cartwright*.

The case of *Cartwright* v. *Cartwright*,[2] the facts of which are stated above (*ante* p. 35), may be referred to as an illustration of the rebuttal of this presumption by proof of a lucid interval. Again, in *Nichols* v. *Binns*,[3] W. P., who for many years had been afflicted with habitual insanity, accompanied with intermissions,

[1] 1826, 3 Add. 79.

[2] 1793, 1795, 1 Phill. 90, 122, and *ante* p. 35.

[3] 1858, 1 Sw. & Tr. 239. Cp. the decision in *Martin* v. *Johnston*, 1858, 1 F. & F. 122.

executed a will while confined in a lunatic asylum. The instructions for it were designed and written without assistance by himself, and the will made a natural and equitable distribution of his property. Probate was granted.

Ballantyne v. *Evans*.

Ballantyne v. *Evans*,[1] decided by the Court of Session in 1886, is an interesting illustration of the proposition under consideration. An officer in the army, who laboured under the mistaken impression that people believed him to have committed a disgraceful crime, and that he was shunned by his friends and brother officers in consequence, committed suicide when under the influence of this impression, leaving a document written very shortly before his death, by which he bequeathed his whole property to his brother-in-law, with whom he had for many years been on terms of affectionate intimacy. His only near blood relative was an imbecile sister, who was otherwise sufficiently provided for. It was held that, assuming his delusion to have been an insane delusion, which the Lord Justice-Clerk doubted, it was not of such a character nor so connected with the writing which the deceased had left as to justify its reduction.

Delusion insufficient to suspend testamentary capacity.

Delusion or insanity insufficient to suspend testamentary capacity as above defined.—(1) A., a testatrix, was under delusions, which were intermittent, and considered trifling by her friends, about her money matters. Her capacity to revoke a will was held to be not destroyed.[2] (2) M. disinherited his relations, to whom he had conceived a strong dislike, which was not, however, proved to have been founded on delusions. M. was alleged to have had a sunstroke when on service in Sierra Leone; and he believed that in youth he had been fed with game taken out of eagles' nests, and that soldiers suffering from yellow fever were in his bed. M.'s will was declared valid.[3] *A fortiori*, testamentary capacity is not destroyed by a delusion which quickens the testator's faculties.[4]

Apparent exceptions.

The exceptions to this proposition are chiefly apparent. In *Dew* v. *Clark*, *ante* p. 33, there was the clearest evidence that the will in dispute sprang directly from the diseased belief of the testator; and further, it may be seriously questioned whether Sir John Nicholl's language will bear the construction popularly put upon it, that delusion is the only criterion of insanity.[5] In

[1] 1886, 13 Ct. of Sess. Cas. 4th ser. 652.

[2] *Laing* v. *Bruce*, 1838, 1 D. 59.

[3] *Morison* v. *Maclean's Trustees*, 1862, 24 D. 625.

[4] Cp. *Jenkins* v. *Morris*, 1880, 14 Ch.D. 674, and see *ante* p. 12, note 4.

[5] Cp. 3 Add. pp. 90, 93, 170, 204, 205, 206, with *Chambers* v. *Queen's Proctor*, 1840, 2 Curt., at p. 448.

Waring v. *Waring*,[1] Lord Brougham did indeed declare that any the least degree of insanity would vitiate a will, made under its influence; and this doctrine was accepted by Sir J. P. Wilde in *Smith* v. *Tebbitts*;[2] but in both cases the presence of insane delusions, distinctly operating on the disposing mind of the testator, reduced this metaphysical analysis to the proportions of an *obiter dictum*. See *ante* pp. 36-38.

Delusion foreign to will. *Banks* v. *Goodfellow*.

The *locus classicus* for the proposition that a delusion foreign to the subject-matter of the will does not invalidate it is, of course, *Banks* v. *Goodfellow*,[3] which is fully examined *ante* p. 38. It may be added that if under the circumstances in that case the testator's hatred to Featherstone Alexander had been such that the very mention of his name unfitted him for business, and rendered him unable to estimate the comparative claims upon his bounty, probate would have been refused.[4]

A lucid interval is not necessarily a complete restoration to mental vigour previously enjoyed,[5] nor is it merely the cessation or suppression of the symptoms of insanity;[6] it is the recovery of testamentary "memory, judgment, and will" as above defined.[7]

As to the care with which proof of a lucid interval ought to be examined, see *White* v. *Driver*;[7] and cp. as to lucid intervals, *Gombault* v. *Public Administrator*.[7]

Moral insanity.

It was laid down by Sir H. Jenner Fust in *Frere* v. *Peacocke*[8] that moral insanity, or the insane perversion of the moral feelings, unaccompanied by delusion, which is the legal test of insanity, is insufficient to invalidate a will. In this case, the testator whose will was in question took an irrational pleasure in hearing of the sufferings of others, rubbing his hands, grinning, and otherwise manifesting his gratification at evil tidings. Probate of his will was granted. The facts are not reported with sufficient fulness to render it possible to comment on the particular decision. But the *ratio decidendi* is undoubtedly too wide. Delusion is not

[1] 1848, 6 Moo. P.C. 341 *et seq.*

[2] 1867, L.R. 1 P. & D. 398-437.

[3] 1870, L.R. 5 Q.B. 549; and cp. *Merrill* v. *Rolston*, 1882, 5 Redf. 220; *Miller* v. *White*, *ib.* 320; *Dickie* v. *Van Fleck*, *ib.* 284; *Kingsbury* v. *Whitaker*, 1880, 32 Louis. A.R. 1055; *Cole will case*, 1882, 49 Wisc. 179; *La Bau* v. *Vanderbilt*, 1877-79, 3 Redf. 284; *Manley's Executors* v. *Staples*, 1893, 65 Verm. 370.

[4] *Creagh* v. *Blood*, 1845, 2 J. & La Touche, 509, per Sir Edw. Sugden, L.Ch., at p. 515.

[5] Per Eldon, L.Ch., in *ex parte Holyland*, 1805, 11 Ves. 10, disapproving a dictum of Lord Thurlow. See *ante* p. 34.

[6] See per Sir John Dodson in *Dyce Sombre* v. *Prinsep*, 1856, Deane, at p. 110.

[7] *Towart* v. *Sellars*, 1817, Scotch Appeal, 5 Dow P.C. p. 236; *White* v. *Driver*, 1809, 1 Phill. 88; *Gombault* v. *Public Administrator*, 1857, 4 Bradf. 226.

[8] 1846, 1 Rob. E.R. pp. 442, 456; and cp. *Morison's case*, 1862, 24 D. 625, per Lord Cowan.

now, if it ever was (*v. ante* p. 55), the legal test of incapacity; and there cannot be much question that moral insanity, if sufficiently pronounced to unhinge the disposing mind, would invalidate a will.

Burden of proof, incidence of.

There has been considerable controversy as to the incidence of the onus of proof of testamentary capacity. It is thought that the real effect of the authorities is best stated in the judgment of Lord Penzance in *Cleare* v. *Cleare*,[1] in commenting upon *Sutton* v. *Sadler*.[2] "In all cases, whether through the medium of a presumption unrebutted, or of positive evidence to that end, the party who puts forward a document as the will of a testator must establish the fact that the testator was competent to make a will when he executed it." The reason for this rule is well stated in an American case, *Crowningshield* v. *Crowningshield*:[3] "The heirs-at-law rest securely upon the statutes of descents and distribution, until some legal act has been done by which their rights under those statutes are lost or impaired."

Although the presumption that a man is to be taken as sane till he is proved to be insane does not apply to wills,[4] the production, and proof of the execution, of a will, rational on the face of it, and not impugned by contrary evidence, would of course entitle the party propounding it to probate; but this is not because a testator is presumed to be sane till the reverse is shown, but because the Court is satisfied on the evidence before it that he was sane.[5] The immediate burden of proof

[1] 1869, 1 P. & D., at p. 657.

[2] 1857, 3 C.B., N.S., 87.

[3] Per Thomas, J., 1854, 2 Gray 527. Cp. also *Gerrish* v. *Nason*, 1843, 22 Maine, 438; *Cilley* v. *Cilley*, 1852, 34 *ib.* 162; *Dawson* v. *Chater*, 10 Geo. I., 9 Mod. 90; *Earl of Fingal* v. *Blake*, 1828, 1 Moll. *t.* Hart, 113. Cp. also as to the right of an heir under the old law to a *devisavit vel non*, *Bransby* v. *Keridge*, 3 Geo. I., 2 Eq. Cas. 767; *Bidulph* v. *Bidulph*, 1725, 2 P.W. 285; *Squire* v. *Pershall*, 1726, Vin. Abr. tit. Devise Z (2), pl. 13; *Luxton* v. *Stephens*, 1735, 3 P.W. 374; *Wallis* v. *Hodgeson*, 1740, 2 Atk. 56; *Webb* v. *Claverden*, 1742, 2 Atk. 423; Anon. 1743, 3 Atk. 17; *Berney* v. *Eyre*, 1746, 3 Atk. 387; *Blinkehorne* v. *Feast*, 1751, 1 Dick. 153; *Turner* v. *Turner*, 1758, *ib.* 313; *Devie* v. *Lord Brownlow*, 1784, 2 Dick. 796; *Bates* v. *Graves*, 1793, 2 Ves. jun. 288-9; *White* v. *Wilson*, 1806, 13 Ves. 87; *Vaughan* v. *Fitzgerald*, 1804, 1 Sch. & Lef. 316; *Pemberton* v. *Pemberton*, 1807, 13 Ves. 297-8; *Jones* v. *Jones*, 1819, 7 Price 663; *Levy* v. *Levy*, 1818, 3 Madd. 245; *Jones* v. *Frost*, 1822, Jac. 466; *Tucker* v. *Sanger*, 1824, 1 M'Lel. 424; *Abrams* v. *Winshup*, 1826, 1 Russ. 526; *Scaife* v. *Scaife*, 1828, 4 Russ. 309; *Smith* v. *Dearmer*, 1829, 3 Y. & J. 278.

[4] *Sutton* v. *Sadler*, *ubi sup.*, at p. 95.

[5] The only authority which is even apparently hostile to this interpretation is contained in a passage in the judgment in *Sutton* v. *Sadler*, *ubi sup.*, at pp. 95, 96. Commenting on a statement in Greenleaf's *Evidence*, Creswell, J., who delivered the judgment of the Court, said: "If the learned professor means . . . that the competency of a testator is to be assumed until it is impeached by evidence, we agree with him; but if he means that a will *must* be assumed to be valid, as made by a competent testator, unless the Court or jury are convinced that he was incompetent, we think it is not in accord-

may change repeatedly during the trial,[1] but the ultimate burden rests throughout on the party propounding the will, and if *he* fails at the last to convince the Court or jury that it was the act of a sound disposing mind, it cannot stand.[2]

Evidence. Testamentary capacity why difficult to determine.

For a variety of obvious causes, testamentary capacity is generally a difficult matter to determine. A large portion of the evidence adduced is evidence of opinion, and opinion formed by witnesses each of whom fixes and applies his own standard. Further difficulties are created by the facts that many of the witnesses belong to a class very apt, either from ignorance or from prejudice or interest, to arrive at erroneous conclusions, and that the testator's mental state may change from day to day.[3] It is of course impossible to state exhaustively the kinds and degree of evidence by which testamentary capacity may be established or disproved. But a few general observations may be made on the subject.

The will itself.

The will itself is always a primary and capital point for consideration, partly because it is the act whose validity is in question, partly because the rationality and propriety of its provisions, or the reverse, may throw a valuable[4] light upon the testator's competency. Before any will, however, is admitted to probate, the Court must be satisfied that the testator possessed a sound and disposing mind, as defined *ante* p. 42.

Handwriting.

The fact that the will is in the handwriting of the testator is a point of importance. It tells in favour of the spontaneity of the instrument.[5] It may be added that certain forms of mental

ance with the English authorities on the subject."

At p. 98, however, the learned judge says that the onus remains throughout on the party propounding the will; and cp. *Waring* v. *Waring*, 1848, 6 Moo. P.C. 355. It is thought that the statement in the text affords the solution of the difficulty. It may be added that *The A.-G.* v. *Parnther*, 1792, 3 Bro. C.C. 441, and *Groom* v. *Thomas*, 1829, 2 Hagg. E.R. 434, deal with the shifting of the immediate, and not with the incidence of the ultimate, *onus probandi*.

[1] Cp. *Evans* v. *Knight*, 1822, 1 Add. 283-4, where the distinction is not, however, very clearly brought out. *Waring* v. *Waring*, *ubi sup.*, and *Smee* v. *Smee*, 1879, 5 P.D., per Sir James Hannen, at p. 91.

[2] *Sutton* v. *Sadler*, *ubi sup.*, and cp. *Barry* v. *Butlin*, 1838, 2 Moo. P.C. 481; *Harwood* v. *Baker* 1840 3 Moo. P.C. 282; *Keays* v. *M'Donnell*, 1872, 6 Ir. R. Eq. 612.

[3] Cp. a valuable passage on this subject in the judgment of Sir John Nicholl in *Kinleside* v. *Harrison*, 1818, 2 Phill. E.R., at pp. 456-8.

[4] See, however, observations, *ante* p. 36, on the dicta which seemed to make the will the sole test of capacity. If a will is *ex facie* rational, its execution is proved, and it is not impugned, it may be admitted to probate without further evidence.

[5] Cp. *Cartwright* v. *Cartwright*, 1793, 1 Phill. E.R., at p. 94: and *A.-G.* v. *Parnther*, 1792, 3 Bro. C.C. 441; *Hall* v. *Warren*, 1804, per Sir William Grant, Ves., at p. 610; *Rutherford* v. *Maule*, 1832, 4 Hagg. E.R., at p. 224; *Coghlan* v. *Coghlan*, 1 Phill. E.R., at p. 120. Of course the fact that a will is in the testator's handwriting is not conclusive. See *Clarke* v. *Lear*, 1791, 1 Phill. E.R. 119.

disease affect the handwriting of the patient.[1] The question as to the proof of handwriting by experts or other persons belongs to the general law of evidence. As the question at issue in cases as to the wills of lunatics is whether the will is the act of a sound disposing mind, parol or documentary evidence as to what Sir William Grant termed in *Hall* v. *Warren*[2] "the history" of the instrument—the instructions for its preparation, the behaviour of the testator at the time of its execution, and so forth—is both admissible and material.[3]

Conduct of testator.

Attestation.

A witness who attests a will ought to see not only the physical act of signing, but that the testator is *compos* to sign;[4] and the evidence of an attesting witness impeaching a testator's sanity will be scanned most jealously by the Courts.[5] The Courts have, however, always taken cognisance of the perfunctory manner in which the duty of attestation is frequently discharged; and a will has been pronounced for, though both the attesting witnesses deposed to the testator's incapacity.[6] Such a case would require to be supported on the whole *res gestae*, by strong probability arising from the conduct of all parties, and by the improbability of the practice of any fraud or circumvention, or the exercise of undue influence.[7]

Neither subsequent suicide nor supervening insanity will be reflected back upon previous eccentricity [8] so as to invalidate a will.[9]

Undue influence.

The law as to undue influence has been considered already (see *ante* pp. 45-52).

[1] This latter subject is too technical to be pursued here. A full discussion of it will be found in Tuke's *Psychol. Dict.*, art. Handwriting.

[2] *Ubi. sup.*

[3] Cp. *Hall* v. *Warren*, *ubi. sup.*; *Barry* v. *Butlin*, 1838, 1 Curt., per Parke, B., at p. 641; *Durling* v. *Loveland*, 2 Curt. 225—where the unsatisfactory character of proof of "a bare execution" is pointed out.

[4] *Harris* v. *Ingledew*, 1730, 3 P.W. 93; and cp. *Wallis* v. *Hodgeson*, 1740, 2 Atk. 56; *Right* v. *Price*, 1779, 1 Doug. 241: *Wright* v. *Tatham*, 1837, 7 A. & E. 313; *Hudson's case*, 34 Car. II. Skin. 79; *Digg's case*, cit. *ib.*; *Walton* v. *Shelley*, 1786, 1 T.R. 300; *Starnes* v. *Martin*, 1836, 1 Curt. 294; *Lowe* v. *Jolliffe*, 2 Geo. III., 1 W.Bl. 366, *R.* v. *Nueys*, 3 Geo. III., *ib.* 416; *Goodtitle* v. *Clayton*, 1768, 4 Burr. 2225.

[5] *Bootle* v. *Blundell*, 1815, 19 Ves. 504; *Howard* v. *Braithewaite*, 1812, 1 V. & B. 208; *Kinleside* v. *Harrison*, 1818, 2 Phill. 499; *Burrowes* v. *Lock*, 1805, 10 Ves. 474; *Bridges* v. *King*, 1828, 1 Hagg. E.R. 288; *Le Breton* v. *Fletcher*, 1829, 2 Hagg. E.R. 558; *Young* v. *Richards*, 1839, 2 Curt. 373; *Pennant* v. *Kingscote*, 1843, 3 Curt. 642.

[6] *Le Breton* v. *Fletcher*, 1829, 2 Hagg. E.R. 558; and cp. *Landon* v. *Nettleship*, 1824, 2 Add. 245.

[7] *Mackenzie* v. *Handasyde*, 1829, 2 Hagg. E.R., at p. 219.

[8] *Aliter*, in the case of previous insanity, *Symes* v. *Green*, 1859, 1 Sw. & T. 401; and see *Groom* v. *Thomas*, 1829, 2 Hagg. E.R. 433, where the effect of insanity prior to making a will on the *onus probandi* is considered. *Burrows* v. *Burrows*, 1827, 1 Hagg. E.R. 109; *Kemble* v. *Church*, 1830, 3 Hagg. E.R. 273, and *ib.* 599, 600; and cp. the Scotch case of *Waddell* v. *Waddell's Trustees*, 1845, 7 D. 605, 1017.

[9] *Hoby* v. *Hoby*, 1828, 1 Hagg. 146, per Sir John Nicholl.

Evidence of revocation.

A will cannot be revoked except by the intentional act of the testator.[1] It is therefore not revoked either by the fact of the supervening insanity of the testator,[2] or by any act of the testator so becoming insane, unless he is capable of possessing, and does possess, an *animus revocandi*. It is conceived, although the point does not seem to be covered by authority, that as great a degree of capacity would be necessary to a valid revocation as to a valid testamentary act. See *ante* p. 42, as to criterion of testamentary capacity.

Where a will is wholly[3] or partially[4] destroyed by the testator while of unsound mind, as above defined, it may be established in the one case, and proved as it existed in its integral state in the latter, if satisfactory evidence of its destruction and its provisions can be given.

The presumption that a will which was in a testator's custody up to the time of his death, and cannot be found after that event, was destroyed by him, *animo revocandi*, does not apply to a case where a testator became insane after the execution, and continued insane until his death. The burden of showing in such a case that the will was destroyed whilst the testator was of unsound mind, lies on the party setting up the revocation, and in the absence of evidence as to the date of the destruction, the contents of the will are entitled to probate.[5]

Custody of wills of lunatics.

Any person[6] in whose custody or control any testamentary paper of a lunatic, subject to the jurisdiction in lunacy, is, may deposit it in the office of the Masters upon oath,[7] as they may direct, there to remain in safe custody.[8]

The Masters may, on being satisfied of the death of a lunatic, open and read any document deposited with them, purporting or alleged to contain any testamentary disposition made by him, for the purpose of ascertaining who is the executor, and whether any direction is given as to the testator's funeral and place of interment, and may deliver the document to the proper officer to be dealt with according to law.[9]

[1] See 1 Vict. c. 126, sec. 20, and *Clarkson* v. *Clarkson*, 1862, 2 Sw. & Tr., at p. 500.

[2] Co. 4 Rep. 61 (*a*).

[3] Cp. *re Brand*, 1831, 3 Hagg. E.R. 754; *Harris* v. *Berrall*, 1858, 1 Sw. & Tr. 153.

[4] *Doe* v. *Perkes*, 1820, 3 B. & A. 489; *Scruby* v. *Fordham*, 1822, 1 Add. 74.

[5] *Sprigge* v. *Sprigge*, 1868, L.R. 1 P. & D. 608; *Benson* v. *Benson*, 1870, L.R. 2 P. & D. 172.

[6] It is the duty of the committee of the estate, having learned that the lunatic has made a will, to take immediate steps to have it deposited with the Masters, *re Humpleby*, 1828, 2 Coop. Temp. C. 166. See Appx. *post*.

[7] Under the old practice a petition was necessary; a warrant from the Lunatic Office was not sufficient, *re Townsend*, 1852, 21 L.J. Ch., N.S., 747.

[8] R.L., 1892, r. 45. See Appx. *post*.

[9] R.L. 1892, r. 47. See Appx. *post*.

Rules as to Costs.

1. Costs of propounding will unsuccessfully allowed out of estate, if testator's conduct cause of litigation.

1. *Primâ facie* an executor is justified in propounding his testator's will,[1] and if the conduct of the testator himself must be regarded as the cause of litigation,[2] he will be allowed the cost of doing so out of the estate. A testator's conduct is the cause of litigation when by his behaviour, habits, and mode of life he has given his executors no reason to question his testamentary capacity, or has raised an issue in regard to it which they are justified in submitting to the Court.

Boughton v. *Knight.*

In *Boughton* v. *Knight*[3] the executor had before him at the time of propounding the will only evidence that the testator was a very eccentric man, and Sir James Hannen held that the costs must be allowed out of the estate.

But even if an executor is aware of facts pointing to incapacity, he may still be justified in propounding his testator's will if there is a really obvious question of capacity to be tried, and he does not know that he is attempting to obtain the sanction of the Court to a document which cannot be supported.[4]

Rogers v. *Lecocq.*

An executor will not, however, get costs out of the estate where he propounds a will which is, on the face of it, one that ought never to have been put forward merely because the party resisting the will refused to disclose to him information which would possibly have caused the litigation to be dropped.[5]

2. Costs of unsuccessful opposition allowed on same principle.

2. The costs of an unsuccessful opposition to a will by the next-of-kin will also be ordered to be paid out of the estate in cases where the testator by his own conduct and habits and mode of life has given the opponents of the will reasonable ground for questioning his testamentary capacity.[6] Two illustrations of the application of this principle may be given. In

[1] Per Sir James Hannen in *Boughton* v. *Knight*, 1873, 3 P. & D., at pp. 77-80. Cp. also *Prinsep* v. *Dyce Sombre*, 1856, 10 Moo. P.C., at p. 305 ; *Coventry* v. *Williams*, 1844, 3 N. of C., at p. 172 ; and *Jones* v. *Godrich*, 1844, 5 Moo. P.C., at p. 48.

[2] It is on the same principle that costs are allowed out of the estate when the testator has left his papers in confusion. This was the first infringement of the general rule against costs coming out of the estate in testamentary causes—*Davis* v. *Gregory*, 1873, 3 P. & D. 31.

[3] *Ubi sup.*, at p. 64.

[4] *Ubi sup.*, at pp. 77 and 79, and *Davis* v. *Gregory*, *ubi sup.*

[5] *Rogers* v. *Lecocq*, 1896, 12 Times L.R. 209. Barnes, J., said in this case : "The plaintiff was within her rights in refusing to show her hand to the defendants." Cp. *re H. W. Strachan*, 1895, 1 Q.B. 439.

[6] Cp. *Frere* v. *Peacocke*, 1846, 1 Rob. E.R. 442 ; *Fairtlough* v. *Fairtlough*, 1839, Milward 36 ; *Ross* or *Russ* v. *Chester*, 1828, 1 Hagg. E.R. 235 ; *Fulleck* v. *Allinson*, 1830, 3 Hagg. E.R. 527, 547 ; *Davis* v. *Gregory*, 1873, 3 P. & D. 28 ; *Roe* v. *Nix*, 1893, Prob. 55.

Davis v. *Gregory*[1] the evidence before the next-of-kin was substantially as follows. The testator secluded himself and lived entirely apart from society, neither giving nor receiving visits. He continued that course of life for many years, and in the years immediately preceding and subsequent to the execution of the will, and down to his death, his habits became more and more singular. Some of his acts were accountable for by intemperance, and when under the influence of drink he gave way to irrational and passionate expressions of anger against those about him and others; he occasionally threatened his landlady, who gave him notice to quit in consequence of his becoming so "vicious"; on one occasion he tore up his clothes. He left the bulk of his property to charities, and chose as his executor and one of his residuary legatees a person of whom he knew almost nothing, except that he was an undertaker and had buried some members of his family. Sir James Hannen pronounced for the will, but gave the next-of-kin costs out of the estate, on the ground that the testator had by his conduct naturally led those interested in his property to suppose that there was ground for alleging that he was of unsound mind. In *Roe* v. *Nix*[2]—the facts in which have been already stated[3]—Barnes, J., made a similar order, on the ground that the testatrix was a lunatic so found by inquisition, that the inquisition had never been superseded, and that the next-of-kin had medical advice that the case was one which ought to be brought before the Court.

3. Costs, when allowed to neither party.

3. In cases where neither the testator by his own conduct, nor the executors or persons interested under the will by their conduct, have brought about the litigation as to its validity, but the executors or the opponents of the will have, after due inquiry into the facts, arrived at a *bonâ fide* belief in the existence of a state of things which if it did exist would justify the litigation, each party will be left to pay his own costs.[4] The case of *Smee* v. *Smee*[5] is of interest in this connection. The issue was as to the validity of two wills made by a Mr. William Smee, the one in 1859, by which he left his property, subject to the payment of some small legacies, to his wife absolutely, and appointed her sole executor; the other in 1867, by which he gave to his wife only an interest for life or during widowhood in his property, and bequeathed the residue to the Corporation of Brighton towards

[1] 1873, 3 P. & D. 31.
[2] 1893, Prob. 55.
[3] *Ante* p. 52.
[4] Per Sir James Hannen in *Davis* v. *Gregory*, *ubi sup.*, at p. 33.
[5] 1879, 5 P.D. 84.

forming a public library in the Royal Pavilion there. After the testator's death the widow propounded the will of 1859, and the Corporation of Brighton that of 1867, and the next-of-kin impugned them both. It appeared that at the critical periods the testator was subject to insane delusions, viz. that he was the son of George IV. (who took a deep interest in the town of Brighton), that when he was born a large sum of money was placed in his father's hands in trust for him, and that he was robbed by his father by the diversion of a large part of that trust fund to his brothers. The jury found against both wills, doubtless on the ground that the exclusion of the next-of-kin was due to the imaginary wrong done to him in their favour by his father, and that the testator's delusion as to his being the son of George IV. was the *causa causans* of the bequest to the Corporation of Brighton. Sir James Hannen gave to the executrix and the next-of-kin their costs out of the estate, on the ground, presumably, that the testator's own conduct justified the litigation, but declined to make a similar order in favour of the Corporation of Brighton, though he did not condemn them in costs, as he considered that they could not be blamed for having raised the question of the testator's sanity. The reasons for this latter part of the decision are not stated, but may be surmised. Nothing had apparently been done by the testator or his widow or his next-of-kin to induce the Corporation to propound the later will, they were therefore not entitled to costs. But they had, after discovering their position as residuary legatees, made inquiries, which led them to a *bonâ fide* conviction that the earlier will was invalid and the later valid. They were therefore not condemned in costs. The Court has power to condemn any party to pay his own costs.

4. Undue influence.

4. Although the rule is not to allow costs to follow the event in cases where undue influence has been unsuccessfully pleaded,[1] such costs may be given if the conduct of the testator or of persons beneficially interested in the will has made the plea a reasonable one. On this principle an unsuccessful opponent of a will on the ground of undue influence has been allowed his costs out of the estate where the testator's signature was evidently patched and altered, and the person who had got the will executed never mentioned the circumstance to members of the

[1] *Black* v. *Cleland*, 1895, 12 Times L.R. 65 ; and cp. *Foley* v. *Brolan*, 1883, 11 L.R. Ir. 421 ; and *Groffman* v. *Groffman*, 1891, *Times*, Oct. 28 ; cit. Powles and Oakley, Prob. 3rd. ed. 46.

family who soon afterwards came to the house;[1] and where the widow of a testator was alleged to have used an expression prior to the making of the will, viz. that if he did not make a new will she would leave him to lie and die, on which a plea of undue influence might reasonably be founded;[2] and in *Cousins* v. *Tubb*[3] the costs of all parties were allowed out of the estate on the ground that the testator had first expressed unhappiness at having made the will, and stated that he had been forced to do so, and subsequently, when taxed with these statements, said that he was continually being bothered about having made the will, and that he said what he did at those times for peace and quietness. The *ratio decidendi* here was that the testator's duplicity was the cause of the litigation.

Mode in which Issue as to Validity of Will may be raised.

Issue of validity of will, how raised.

The issue of the validity of a will of personal estate may be raised either by probate in solemn form, or by motion for administration as in intestacy,[4] or by a caveat.

The issue of the validity of a will of real estate may be raised either by proceedings under the Probate Act 1857 (20 & 21 Vict. c. 77), sec. 61,[5] or by an action to establish the will, or by an action for the recovery of land,[6] or where there is some obvious definite impediment in the way of such an action, by an action to set aside the will.[6]

[1] *Orton* v. *Smith*, 1873, 3 P. & D. 23.

[2] *Shortman* v. *Shortman*, 1893, 67 L.T. 718.

[3] 1892, 65 L.T. 716; *Smith* v. *Smith*, 1866, L.R. 1 P. & D. 239; *Broadbent* v. *Hughes*, 1860, 29 L.J. P. & M. 134.

[4] Cp. *re Bourget*, 1837, 1 Curt. 591; *re Watts*, 1837, *ib.* 594. If the motion is granted, the alleged will will nevertheless be directed to be left in the registry in order that any one having an interest in propounding it may do so if he pleases, *re Bourget*, *ubi sup.*

[5] Cp. *Barraclough* v. *Greenhough*, 1867, L.R., 2 Q.B. 612.

[6] *Jones* v. *Jones*, 1819, 7 Price 663; *Pemberton* v. *Pemberton*, 1807, 13 Ves. 297-8; *Middleton* v. *Sherburne*, 1841, 4 Y. & C. 358.

CHAPTER IV

INSANITY AND TORT

Distinction between cases,

It is necessary to distinguish, in considering the relation of insanity to tort, between that degree of unsoundness of mind which does not, and that which does, entail total incapacity.

where incapacity not total,

There can be no doubt that the mere existence of unsoundness of mind does not destroy civil capacity any more than it destroys criminal responsibility. The old authorities—referred to below—in asserting the responsibility *ex delicto*, even of persons who are totally incapable, decide this proposition by implication,[1] and there is an express ruling to the same effect in the decision of the Court of Appeal in 1892 in *Hanbury* v. *Hanbury*,[2] in which, it may be added, the test of criminal responsibility in mental disease was substantially declared to be the test of responsibility for civil acts. The Master of the Rolls said[3] that "he was prepared to lay down as the law of England, that whenever a person did an act which was either a criminal or a culpable act, which act, if done by a person with a perfect mind, would make him civilly or criminally responsible to the law, if the disease in the mind of the person doing the act was not so great as to make him unable to understand the nature and consequences of the act which he was doing, that was an act for which he would be civilly or criminally responsible to the law."

Hanbury v. *Hanbury.*

and cases where incapacity total.

There is some authority for the proposition that even total mental incapacity is no answer to an action of tort. Thus in Viner's Abridgement, Trespass, D 4, it is said that "if a lunatic beats a man, this shall not excuse him in trespass, because it is

[1] *Weaver* v. *Ward*, 14 Jac. Hob. 134; *Haycraft* v. *Creasy*, 1801, 2 East, per Kenyon, C.J., at p. 104; Bac. Abr. tit. Idiots and Luns. E.

[2] 1892, 8 Times L.R. 559; cp. *Brown* v. *Howe*, 1857, 9 Gray Mass. 84; *Morain* v. *Devlin*, 1882, 132 Mass. 87.

[3] *Ubi sup.*, at p. 560.

best to repair him in damages."[1] The reason for this rule was thus stated by the Court in *Weaver* v. *Ward*[2]—an action of trespass brought by one soldier against another who had injured him accidentally while they were skirmishing in a train band. "If a lunatick kill a man or the like (this shall be no felony), because felony must be done *animo felonico*, yet in trespass, which tends only to give damages according to hurt or loss, it is not so, and therefore if a lunatick hurt a man he shall be answerable in trespass."[3] The judgment proceeds to except from the general rule that intention is immaterial in trespass cases, where it "may be judged" that the act was done utterly without the fault of the defendant, "as if a man by force take my hand and strike you." If an exception, however, is to be made in favour of compulsion, it is difficult to see on what principle its extension to total incapacity can be resisted; and it is submitted—and the statement is supported by the language used by Lord Esher in *Hanbury* v. *Hanbury*[4]—that such incapacity would be a valid defence in any action based on tort.

Weaver v. *Ward.*

As to the question whether insanity is a valid defence to a suit for divorce on the ground of adultery, see *ante* p. 29.

[1] And cp. Com. Dig. Battery A; Bac. Abr., tit. Idiots and Luns. E; *Haycraft* v. *Creasy*, *ubi sup.*

[2] 14 Jac. Hob. 134.

[3] And cp. *Ridler* v. *Ridler*, 1729, 1 Eq. Cas. Ab. 279, where the rule that no man may stultify himself, *ante* p. 9, is explained as applicable only to acts done by the lunatic to the prejudice of others; *Krom* v. *Schoonmaker*, 1848, 3 Barb. N.Y. 647, where an insane magistrate was held liable for issuing process, which had he been sane would have been malicious. It was said in this case that the measure of damages was "the mere compensation of the party injured." Cp. also *Long* v. *Chicago, etc., Railroad Co.*, 1892, 30 Am. St. R. 271; *Dickinson* v. *Barber*, 1812, 9 Mass. 225, where the degree of unsoundness of mind of an insane defendant to an action of slander was taken account of.

[4] 1892, 8 Times L.R. 560. Cp. Holmes on the Common Law, Lecture III.; and *Stanley* v. *Powell*, 1891, 1 Q.B. 86, where the rule under consideration was rejected by Denman, J.

CHAPTER V

INSANITY AND LIFE INSURANCE

Capacity to insure.

THE capacity of the insane to enter into the contract of insurance is governed by the general law, as stated in chap. i., *ante* p. 14. An interesting question was recently raised in an American case, *Jarvis* v. *Life Insurance Co.*,[1] as to whether intemperance leading to insanity and subsequent suicide avoided a policy containing provisos against both intemperance and insanity as causes of death for which the insurers would be liable. The jury were charged affirmatively on this point, but they disagreed, and the case has apparently not yet been retried.

Suicide and life insurance.

It is, however, chiefly in connection with suicide [2] that insanity and the law of life insurance come into contact.

Policy avoided by *felo de se*.

1. Suicide amounting to *felo de se* will avoid a policy of life insurance, whether it does or does not [3] contain a proviso for (or against) such avoidance, and even if the policy was not taken out by the insured with the intention of defrauding the company by subsequent self-destruction.[4]

Principle of rule.

The principle of this rule is that it is against public policy for any system of jurisprudence "to include amongst the rights which it enforces rights directly resulting to the person asserting

[1] 5 Ins.L.J. 507.

[2] As to suicide as a felony and as evidence of insanity, see *post*, "Rules in Macnaughton's Case."

[3] *Amicable Society* v. *Bolland*, 1830, 4 Bligh, N.S., 194 (Fauntleroy case), reversing *Bolland* v. *Disney*, 1827, 3 Russ. 351; followed in *Cleaver* v. *Mutual Reserve Association* (Maybrick case), 1891, 39 W. R. 638, 1892, 40 W. R. 230, reversing decision of Court below, but not as to authority of Fauntleroy case); and cp. the following American cases: *Hartman* v. *Keystone Ins. Co.*, 1853, 21 Pa. St. 466; and *contra* *Fitch* v. *American Life Ins. Co.*, 1875, 59 N.Y. 557; *Mills* v. *Rebstock*, 1882, 29 Minn. 381; *Darrow* v. *Family Fund Society*, 1886, 49 Hun. 246 (where there was a proviso against death "in consequence of any violation of the law").

[4] *A fortiori* of course where it was taken out with such intention. Cp. *Smith* v. *National Benefit Society*, 1889, 51 Hun. 575, 123 N.Y. 85.

them from the crime of that person;"[1] and it extends therefore to the representatives of an insured person committing *felo de se* (and *semble* although he has no beneficial interest in the policy), and also to his assignees, whether with or without valuable consideration.[2]

Extends to representatives and assignees.

2. Where an insured person, whether beneficially interested in the insurance or not, commits suicide while insane, the rule above stated does not apply, and the insurance will not be avoided,[3] unless there is an express provision in the policy vacating it in the event of the insured committing suicide or dying by his own hand, etc.[4]

Suicide while insane. No proviso.

3. Where a policy of insurance does contain a proviso vacating it in the event of the insured "committing suicide," or "dying by his own hand," or "perishing by his own hand"—terms which are practically synonymous,[5]—it will be avoided if the assured take his own life voluntarily with a knowledge of the physical character and consequences of his act,[6] whether he is beneficially interested in it or not.

Where there is proviso.

The questions for the jury in such cases are—(1) Did the insured take his own life? (2) Did he know at the time the physical character and consequences of what he was doing?

The rule above stated is justified on the grounds (1) that it interprets the terms in question in their literal and ordinary sense; and (2) that the insurers must have intended to include "all acts of voluntary self-destruction" in the proviso, in order (*a*) to have the security which a knowledge that such an interpretation would be put upon the proviso would give them over insured persons of imperfect mental equilibrium, and (*b*) to guard themselves against the action of sympathetic juries, who would return verdicts of insanity in every case.[8]

Grounds alleged for rule.

Neither of these reasons appears to be satisfactory; and it is probable that if the question was to be raised again, knowledge

[1] Per Fry, L.J., in *Cleaver* v. *Mutual Reserve Association*, 1892, 40 W.R., at p. 232. In this case the principle was held to exclude a married woman who murdered her husband, whose life was insured for her benefit, under sec. 11 of the Married Women's Property Act 1882, and her representatives, and to create a resulting trust in favour of the insured and his personal representatives.

[2] *Amicable Society* v. *Bolland*, 1831, 4 Bli., N.S., 194.

[3] *Horn* v. *Anglo-Australian Co.*, 1861, 7 Jur., N.S., 673.

[4] As to these expressions, see rule 3, *sup.*

[5] *Dufaur* v. *Professional Life Co.* 1858, 25 Beav. 602; and cp. *Borrodaile* v. *Hunter*, 1843, 5 M. & G. 639; *Clift* v. *Schwabe*, 1846, 3 C.B. 437; *Cooper* v. *Massachusetts Mutual Life Ins. Co.*, 1869, 102 Mass. 227.

[6] *Borrodaile* v. *Hunter*, *ubi sup.* Tindal, C.J., dissenting; *Clift* v. *Schwabe*, *ubi sup.* Pollock, C.B., dissenting; *Dufaur* v. *Professional Life Co.*, *ubi sup.*

[7] *Ubi sup.*

[8] See authorities in note 5, *sup.*

of the nature and moral quality of the act would be taken into account.[1]

Many insurance companies have now abolished their suicide clauses.

Some American companies have, it appears, strengthened them by the addition of the words "sane or insane,"[2] "felonious or otherwise,"[3] which have been held sufficient to protect them.

A condition providing that the policy should not be avoided by the suicide of the insured while insane as against either his representatives, or his *bonâ fide* assignees for value, is good and effectual,[4] even if, in the latter case, the insurers themselves are the assignees.[5]

Burden of proof.

The burden of proving that the insured took his own life rests on the insurers; but, that being established, it is for the person suing on the policy to satisfy the jury that the insured did not commit an act of voluntary self-destruction.[6]

Insanity, fact to be disclosed.

Insanity, especially if connected with bodily illness, *e.g.* paralysis, is a fact to be disclosed on taking out a policy of insurance.[7]

[1] The American authorities are equally conflicting. The English rule is followed in *Dean* v. *American Life Ins. Co.*, 1862, 4 Allen Mass. 96; *Cooper* v. *Massachusetts Mutual Life Ins. Co.*, 1869, 102 Mass. 227. On the other hand, the English rule is rejected in *Breasted* v. *Farmer's Loan and Trust Co.*, 1843, 4 Hill N.Y. 73, which although dissented from in *Van Zandt* v. *Mutual Life Ins. Co.*, 1873, 55 N.Y. 169, has been followed in *Mutual Life Ins. Co.* v. *Terry*, 1872, 15 Wall 580; *Connecticut Life Ins. Co.* v. *Groom*, 1878, 86 Pa. St. 92; *Manhattan Life Ins. Co.* v. *Broughton*, 1883, 109 U.S. 121. "Irresistible impulse" was recognised in this connection in *Newton* v. *Life Ins. Co.*, 1879, 76 N.Y. 426, and *Meacham* v. *Benevolent Assoc.*, 1890, 120 N.Y. 237.

[2] *De Gogorza* v. *Knickerbocker Life Ins. Co.*, 1875, 65 N.Y. 232.

[3] *Scarth* v. *Security Ins. Co.*, 1888, 75 Iowa 346. In some cases, however, these words have been limited to intentional acts. *Bigelow* v. *Berkshire Life Ins. Co.*, 1876, 93 U.S. 284.

[4] *Cook* v. *Black*, 1842, 1 Hare 390; *Moore* v. *Woolsey*, 1854, 1 Jur., N.S., 468; *Jackson* v. *Foster*, 1859, 5 Jur., N.S., 1247; *Solicitors Life Ins. Co.* v. *Lamb*, 1864, 2 De G. J. & S. 251.

[5] *White* v. *British Empire, &c., Co.* 1868, L.R. 7 Eq. 394.

[6] *Clift* v. *Schwabe*, 1846, 3 C.B. 437. Insanity will not be presumed from the mere fact of suicide. Cp. *Weed* v. *Mutual Life Ins. Co.*, 1877, 70 N.Y. 561. If the circumstances render it doubtful whether the case is one of accident or suicide, the presumption should be against the latter. *Mallory* v. *Travellers Ins. Co.*, 1871, 47 N.Y. 52; *Continental Ins. Co.* v. *Delpeuch*, 1876, 82 Pa. St. 225.

[7] *Lindenau* v. *Desborough*, 1830, 3 M. & R. 45. But cp. *Sweete* v. *Fairlie*, 1833, Shelf. Lun. 532.

PART II

LUNACY DEPENDENT ON STATUTE

I.

LUNACY IN ITS CIVIL RELATIONS

A

THE LUNACY ACTS 1890 AND 1891

CONSOLIDATED AND ANNOTATED

53 Vict. c. 5.—An Act to consolidate certain of the Enactments respecting Lunatics. [29th March 1890.] A.D. 1890.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

PRELIMINARY. Sec. 1.

1. This Act may be cited as the Lunacy Act 1890.[1] Short title.

This Act (53 Vict. c. 5) and the Amendment Act of 1891 (54 and Short titles and construction.

[1] The general text of the Act of 1890 is adhered to. The repealed parts are printed in italics, and the additions in heavier type, after the method adopted by Mr. Lewis Edmunds, Q.C., in his consolidated edition of the Patents Acts.

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55 Vict. c. 65) are to be construed as one, and may be cited together as the Lunacy Acts 1890 and 1891 (Act of 1891, sec. 1).

Lunacy Administration down to 1890.

Lunacy administration down to 1890.

The following have been the chief points, in so far as the administrative side of the question is concerned,[1] in the development of the legislation whose results the Lunacy Acts 1890 and 1891 embody.

Reform movement of 18th century.

From the beginning till after the middle of the eighteenth century there was an increasing demand on the part of the more enlightened and humane section of the community for an inquiry into the state of private madhouses in England. Of this demand Defoe was perhaps the most influential and eloquent exponent. It is impossible here to enter into a detailed examination of the abuses against which the efforts of asylum reformers were directed. It must suffice to state that in England, as in every other country in Europe at the time, such a system of asylum administration as existed was disfigured by the most pernicious defects.

Abuses of old asylum system.

No classification, or medical treatment. Insufficient accommodation. Neglect. Cruelty. No official inspection.

The inmates of asylums were not classified according to the nature of their insanity, or treated medically with a view to their cure. There was no attempt to provide them with even the minimum of accommodation necessary to health. The wards were as uncleanly as they were incommodious. Asylum regimen was an alternation between, or rather a combination of "stripes, fetters, and darkness." Government inspection was unknown; and it was easy for family interest or private ill-will to secure the committal to an asylum, and the permanent incarceration there, of persons who were perfectly sane.

Committee of 1763.

In 1763[2] the first step in the path of reformation was taken. A Committee of the House of Commons, comprising the elder Pitt, Wilkes, North, Grenville, and Townshend, was in that year appointed to inquire into the condition of the private madhouses in the kingdom. The Committee reported in favour of the intervention of the Legislature, and ten years later, after the facts which they had recorded had had time to sink into the public mind, the first Bill for the regulation of private madhouses was introduced into and passed the House of Commons. It was thrown out by the House of Lords. In

Act of 1774.

the following year, however, an Act for the regulation of madhouses (14 Geo. III. c. 49) did pass into law, which prohibited, under a

Its provisions.

penalty of £500, any one from harbouring more than one lunatic, without the licence of the College of Physicians, who were required to elect annually five of their Fellows to act as Commissioners for this

[1] As to the growth of the jurisdiction in lunacy see general note to sec. 108, subs. 1, *post*.

[2] Up to this date the only response that the movement for greater humanity in the treatment of the insane had elicited from Parliament was a section in an Act passed in 1744 (17 Geo. II. c. 5, sec. 20), which enabled two justices of the peace to have lunatics who were so far disordered in their senses that it was dangerous to permit them to go abroad safely locked up and chained.

purpose; and further provided that reports of abuses should be furnished to the College of Physicians, and suspended in the Censor's Room for inspection by any one who applied to see them.

Except in so far as it recognised the principle of the legislative regulation of asylums, and created the germ of a Lunacy Board, this statute was practically useless, as the Commissioners had no power to refuse a licence to any one who desired it, and no funds[1] to prosecute offenders. Criticism of.

For more than thirty years after the enactment of this measure nothing further was accomplished in Parliament for the reform of asylum administration. But the mysterious illness of Chatham, the insanity of George III., the distinguished success attending the establishment of the York Retreat under William Tuke, and the labours of Pinel at the Bicêtre in Paris, kept public interest in this question alive. In 1806 Mr. Wynne's Committee proposed the erection of asylums supported by the county rate for pauper lunatics. Two years later an Act was passed (48 Geo. III. c. 96) which *enabled* the justices in every county in England and Wales to take into consideration the propriety of providing a lunatic asylum for the reception of patients within the county. The defect of this measure lay of course in the fact that it was not compulsory. It was amended in some points in 1811 (51 Geo. III. c. 79)[2] and in 1815 (55 Geo. III. c. 46).[3] After this temporary diversion of public attention to the case of pauper lunatics, the struggle for asylum reform once more centred round private madhouses. The success of Mr. Tuke's Retreat excited the jealousy of the superintendent of the York Asylum; a discussion ensued; then came revelations as to the manner in which York Asylum was conducted: a Select Committee of the House of Commons was appointed in 1814 to investigate their truth; the accuracy of the charges brought against the asylum was abundantly demonstrated;[4] and in 1816 Mr. Rose, who had been a leading member of the Committee of 1814, introduced into the House of Commons a Bill providing for the inspection of private madhouses twice a year by a body of eight Commissioners appointed by the Home Secretary, and assisted by two of the local magistrates in each district. This Bill passed the Commons, but was rejected in the Lords.

Act of 1808.

Acts of 1811 and 1815.

Committee of 1814.

Mr. Rose's Bill of 1816.

In 1819 a similar measure proposed by Mr. Wynne, and providing that a General Board of Inspection for madhouses should be appointed, whose members should be at liberty to visit such houses at

Wynne's Bill of 1819.

[1] The Commissioners had power to sue for the statutory penalty. Cp. *Budd* v. *Mary Foulks*, 1813, 3 Camp. 404.

[2] Overseers were required to produce a certificate of a medical man as to the state of the lunatic, and justices were to make returns to the quarter sessions of the cases brought before them, and medical superintendents returns of the state of persons entrusted to their care, at least once a year.

[3] Overseers were to make returns of all lunatics and idiots within their parishes.

[4] On this point, and indeed on the whole subject-matter of this note, cp. Dr. Hack Tuke's *History of the Insane in the British Isles*, chaps. iii. and iv.

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different and uncertain times, and report abuses to the Board, which was to have power to enforce their correction, met with a similar fate.

Act of 1819.

In the same year, however, an Act (59 Geo. III. c. 127) was passed, which purported to make better provision for the care of pauper lunatics. But like most of its predecessors, it was permissive only in the points where compulsory legislation was most needed. In 1827

Committee of 1827.

Mr. R. Gordon succeeded in securing the appointment of a Committee to inquire into the condition of pauper lunatics in Middlesex. The investigations of this Committee disclosed a state of matters which made the immediate intervention of the Legislature imperative. It appeared that the old evils against which asylum reformers had been contending since 1763—the want of proper accommodation for the insane, the absence of sufficient precautions against the confinement of persons who ought to have been at liberty, the secondary position assigned to curative treatment, the undue employment of mechanical restraint, and such like—were still active, if somewhat diminished in

Act of 1828.

force and range. Accordingly in 1828 a statute was enacted (9 Geo. IV. c. 41) which transferred the power of inspecting asylums from the five Commissioners of the College of Physicians to fifteen Metropolitan Commissioners (ten unpaid, and five paid at the rate of one pound an hour) appointed by the Home Secretary. In 1832 the

Act of 1832.

appointment of the Metropolitan Commissioners was vested in the Lord Chancellor instead of the Home Secretary (2 & 3 Will. IV. c. 107).[1] The system of inspection in force in the Metropolitan asylums

Act of 1842.

under the Act of 1828 was in 1842 (5 & 6 Vict. c. 87) extended to the whole of England and Wales; provision was made for two more physicians and two more barristers being added to the Metropolitan Commissioners, and the remuneration of the paid Commissioners was fixed, exclusive of expenses, at one pound an hour while visiting in the Metropolitan districts, and five guineas a day while visiting beyond it. The chief[2] work done by the Metropolitan Commissioners

Report of Metropolitan Commissioners, 1844.

was to prepare and present to Parliament in 1844 the famous Report on the Condition of the Asylums of England and Wales, which has been well called "the Domesday Book" of all that concerns institutions for the insane at that time, and which directly led, on the motion of the Earl of Shaftesbury (then Lord Ashley), to the enactment of the

Acts of 1845.

Lunacy Acts of 1845 (8 & 9 Vict. c. 100, and 8 & 9 Vict. c. 126). The former of these statutes established a permanent Lunacy Commission consisting of ten members, four unpaid, and six—of whom one-half were physicians and one-half barristers—paid, at salaries of £1500 a year each; the latter made compulsory—instead of, as under 9 Geo. IV. c. 41, permissive—provision for the establishment of county and borough asylums.

Acts of 1853.

In 1853 two other statutes of importance were passed. The one

[1] Not less than four or more than five were to be physicians, and two barristers, 2 & 3 Will. IV. c. 107, sec. 3.

[2] The Metropolitan Commissioners did good work also in prosecuting offenders under 9 Geo. IV. c. 41. Cp. *R.* v. *Jones*, 1831, 2 B. & Ad. 611; *R.* v. *Sharples*, 1831, Shelford (edition 1833), 481 n. (y); *R.* v. *Lucett*, 1831, *ib.* 482 n. (3).

(16 & 17 Vict. c. 96) amending 8 & 9 Vict. c. 100; the other (16 & 17 Vict. c. 97) consolidating the laws respecting county and borough asylums.

Committee of 1859-60.

In 1858 there was a revival of public suspicion in regard to the conduct of asylums, and in February 1859 a Select Committee of the House of Commons was appointed to inquire into the working of the various Acts of Parliament for the care and treatment of lunatics and their property. The outcome of the labours of this Committee was the enactment of a Lunacy Law Amendment Act in 1862 (25 & 26 Vict. c. 111), which contained a number of important safeguards against the improper admission of patients into institutions for the insane. A person signing an order for admission must have seen the patient within one month (sec. 23). Certain persons were prohibited from signing any certificate or order for the reception of any private patient into a licensed or other house, viz. those receiving a percentage on, or otherwise interested in the payments to be made by such patients, as well as any medical attendant (sec. 24). If defective medical certificates were not amended within fourteen days, the Commissioners were authorised to order the patient's discharge (sec. 27). On the admission of a patient, the documents relating to his case were to be transmitted to the Commissioners within one clear day instead of after two, and before the expiration of seven (sec. 28). Provision was also made for more frequent visitation of patients by the Commissioners (sec. 29), for the release of patients on trial (sec. 38), and for the transmission of their correspondence unopened (sec. 40).

Act of 1862.

The next event requiring notice here is the appointment of the Dillwyn Committee in 1877.

The Dillwyn Committee, 1877.

The Dillwyn Committee, appointed on 12th February 1877 "to inquire into the operation of the Lunacy Law so far as regards the security afforded by it against violations of personal liberty," like the Committee of 1859, was in large measure an outcome of the conviction of certain sections of the public that the admission of patients into asylums was too easy, and that their discharge from them was too difficult; and much of the interesting evidence[1] which it collected is confined to cases of alleged hardship and injustice.[2] But the report[3] which the Committee ultimately presented to the House of Commons contained a number of valuable recommendations, some at least of which have now, in terms or in substance, received a legislative embodiment. The conclusions at which the Committee arrived were that "although the present system was not free from risks which might be lessened, though not wholly removed, by amendments in the existing law and practice, yet, assuming that the strongest cases were brought before them, allegations of *mala fides* or of serious abuses were not substantiated. . . . Nevertheless, the anomalous state of the law, which undoubtedly permits forcible arrest and deportation by

Recommendations.

[1] P. P. 1877, 373.

[2] Cp. Mr. Peter Chance, 222; Mrs. Louisa Lowe, *ib.* pp. 236-249; Rev. W. A. O'Conor, *ib.* 249; Rev. J. W. Thomas, *ib.* 280; Mrs. Petschler, 285.

[3] Cp. Ev. of Sir J. Coxe, Ans. 1981 *et seq.*

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private individuals, and the fearful consequences of fraud or error, have induced the Committee to inquire whether any additional safeguards may be devised." The proposals or suggestions of the Committee were—(1) an emergency certificate as in Scotland,[1] signed by one medical man, or two fresh certificates to be obtained if the patient remains in the asylum for more than three days; (2) the preparation from the case book, and despatch to the Commissioners, of a statement as to each patient, at the end of the first month after admission, and in addition to the preliminary report required under the existing law;[2] (3) the limitation of the efficacy of a reception order to three years, on the expiry of which a special report, to be afterwards repeated annually, should be sent to the Lunacy Board by the superintendent;[3] (4) the original order to be given by a near relative, as in Ireland, or other responsible person;[4] (5) the visitation of patients every six months by the person signing the order, as "the surest mode of guarding against unduly prolonged detention" consisted in "frequent and careful visitation of all places in which any lunatic is confined, with full power placed in the hands of the Commissioners to order his discharge, and in the more general adoption of the system of probationary release";[5] (6) reports to be sent to the Commissioners of patients kept under restraint in private families or religious houses in the British Isles,[6] not for profit, provided that the reports were confidential, and the patients confirmed lunatics, and not merely suffering under temporary derangement; (7) the testing of the mental condition of any patient under control by two medical men sent by any person, with the sanction of the Commissioners;[7] (8) personal examination of patients, such as that made by the Chancery Visitors, to be extended to all patients irrespective of property; (9) amalgamation of the offices of Chancery Visitors and Lunacy Commissioners;[8] (10) administration of property of persons unable to manage it, without deprivation of liberty;[9] (11) the setting apart of particular workhouses for harmless lunatics; (12) the reception of voluntary boarders in asylums on notice to the Lunacy Board;[10] (13) the existence of private asylums to be left to the spontaneous action of the public, sufficient accommodation in public asylums, as in Scotland, Cornwall, and at Cheadle, being encouraged and facilitated by an enlargement of the powers of magistrates and other means calculated to extend this system; (14) greater freedom to patients in asylums in regard to visitation by friends and correspondence;[11] (15) a consolidation of the Lunacy Acts.[12]

Urgency order.

Statements of bodily and mental condition to Commissioners in Lunacy. Recertification.

Original order by relative. Visitation by person signing reception order.

Reports to Commissioners.

Medical examination at instance of any person. Personal examination irrespective of property. Amalgamation. Committal of estate without person. Special workhouses. Voluntary boarders. Extension of public asylum system. Greater freedom as to visitation and correspondence. Consolidation of Acts.

Mr. Dillwyn introduced a Bill in 1880 framed with a view to carrying into effect the recommendations of the Committee of 1877.

[1] Now practically embodied in sec. 11 of Act of 1890, *post*.
[2] Act of 1890, sec. 39, subs. (1).
[3] See sec. 38, subs. (4), now superseded by sec. 7 of the Lunacy Act 1891.
[4] See sec. 5, subs. (1), *inf*.
[5] *Ib.* subs. (3), *inf*.
[6] Cp. Ev. of Arthur H. Guinness, *ubi sup.* 264.
[7] See sec. 49, *post*.
[8] See sec. 337, *post*.
[9] See sec. 116, subs. (1), *post*.
[10] See sec. 229, *post*.
[11] See sec. 41, *post*.
[12] Acts of 1889-90-91.

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It was sharply criticised by the Commissioners in Lunacy,[1] chiefly on the grounds that the interposition of magisterial authority—for which it provided, before a patient could be sent to an asylum—would hinder early treatment and cause clandestine removals. But these objections did not prevent the Earl of Selborne from introducing a Bill embodying substantially the same provision and recommendations in 1883. This Bill was passed in the House of Lords by Lord Herschell in 1886, and again by Lord Halsbury in 1887 and 1888, and it became law as the Lunacy Acts Amendment Act 1889.[2]

Dillwyn's Bill, 1880. Objections of Commissioners in Lunacy to. Bill of 1883. Bill of 1886. Bills of 1887-88.

The Lunacy Act of 1889 is so closely associated with the legislation of 1890 and 1891, that it will be more conveniently dealt with in the notes to these Acts, where references to the corresponding sections in the Act of 1889 are given both in the text and, bracketed, in the marginal notes. The points in which the Lunacy Act of 1891 amended the Act of 1889 are noted under the sections to which the amendments relate.

Act of 1889.

Lunacy Act 1891.

2. Save as in this Act otherwise expressly provided this Act shall not extend to Scotland or Ireland.

Extent of Act. (Act of 1889, s. 2.)

Save . . . expressly provided.—Viz. secs. 86-89, *post*, relating to escape and recapture of lunatics from, and in, England, Scotland, and Ireland; sec. 107, *post*, transmission of inquisition and supersedeas to England and Ireland; sec. 131, *post*, powers as to property in England, Scotland, and Ireland.

Provision applicable to Scotland and Ireland.

The removal of criminal lunatics to and from different parts of the United Kingdom does not fall within this Act. But see notes to Criminal Lunatics Act 1884, *post*.

To Scotland.—

Lunacy Administration in Scotland.[3]

Scottish Lunacy Administration. Board of Lunacy.

The lunacy affairs of Scotland are administered by a Board of Lunacy, of which the most active members are the two paid Medical Commissioners. They are assisted by two Deputy Medical Commissioners, whose chief duty is to supervise and visit the lunatics who are not in asylums.

Number of patients.

There were 13,489 registered lunatics in Scotland on 1st January 1895, of whom 1996 were private patients, and 11,493 were chargeable to parishes. Of the *private patients* 1588 were in Royal Asylums, 143 in district (rate-provided) asylums, 152 in private (proprietary) asylums, and 113 in private dwellings. Of the *pauper patients* 2592

Private patients.

Pauper patients.

[1] 35th Report, p. 118.

[2] See further criticisms by the Commissioners in Lunacy in their 41st Report. Reference may be made here to another Lunacy Act passed in 1885 (48 & 49 Vict. c. 52) providing for the removal of lunatics to workhouses in cases of urgency, and to the Idiots Act 1886 (see *post*).

[3] The author is indebted for this sketch of Lunacy Administration in Scotland to Dr. Yellowlees, Physician Superintendent of the Glasgow Royal Asylum.

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were in Royal Asylums, 3634 in district asylums, 1726 in parochial asylums, 864 in lunatic wards of poorhouses, and 2677 in private dwellings.

Features of Scottish lunacy administration.

These figures bring out strikingly some of the important features of Scottish lunacy administration.

Royal Asylums.

They show that more than a third of the insane are provided for in *Royal Asylums.* These institutions, seven in number, were founded early in the century by private benevolence aided by parochial contributions, soon after the York Retreat had aroused national sympathy for the insane, and had inaugurated the mighty reformation in their treatment. Although incorporated by Royal Charter, they receive no aid from the State, but are self-sustaining charities managed by leading citizens for the public good. They are analogous to the lunatic hospitals of England, but have been managed on broader lines.

Private proprietary asylums.

Private (*proprietary*) *asylums* do not abound or greatly flourish in Scotland. They are only five in number, and contain among them only 152 patients. For many years no pauper patient has been received for profit into any private asylum in Scotland.

District asylums.

The *district asylums* correspond to the county asylums of England, receiving the pauper patients from a certain area, and a few lower-class private patients.

The *parochial asylums* receive all the lunatics of their own parish, while the *lunatic wards of poorhouses* receive only chronic cases, which have all or nearly all passed through the asylum.

Private dwellings:

Lunatics in private dwellings furnish the most striking of all the features of the Scotch system, no fewer than 2677 pauper patients being thus provided for who would otherwise have required asylum accommodation.

pauper lunatics in;

These pauper patients are selected from the asylums, are boarded in private houses in the country, with suitable guardians of the ordinary peasant class, who may or may not be relatives, who treat them as members of the family, and receive for them a weekly payment of about six shillings besides clothing. These patients are visited and reported on regularly by the parochial medical officer, and by the Deputy Commissioners in Lunacy, as well as by the Inspector of Poor, and experience has shown that, with proper selection of patients and of guardians, and with due supervision, a considerable proportion of pauper lunatics, 15 to 20 per cent, can thus be dealt with, at far less cost than in any institution, and with better results as to their health, happiness, and usefulness.

private patients in.

Private patients may be placed in private dwellings in the incipient stage of the illness and before the disease is confirmed, for a period not exceeding six months, on a mere certificate from the medical attendant, and without any legal sanction from Sheriff or Board of Lunacy. With the sanction of the Board of Lunacy, a

Reception of private patients for profit.

private patient can be received for profit into a private dwelling under medical certificate; or several (not exceeding four) private patients may be received for profit into a private dwelling specially

Visitation of patients.

licensed by the Board. All such patients, whether in a licensed

dwelling or not, must be regularly visited and reported on by a medical man, and are also visited by the Deputy Commissioners in Lunacy.

Voluntary boarders.

Patients are received into asylums as *voluntary boarders* under previous sanction of the Board of Lunacy. They are treated in all respects as ordinary patients, but they can effect their discharge by giving three days' notice.

Reception of ordinary patients.

Ordinary patients, whether private or pauper, are only received into asylums under order of the Sheriff, founded on two medical certificates, or on a certificate of emergency authorising detention for three days, when needful, pending the warrant of the Sheriff.

This official warrant is deemed at once a security for the public, and a full authority for detention. It so commands public confidence, that for many years there has been no such thing in Scotland as a prosecution for illegal detention.

Copies of the papers are sent in every case to the Board of Lunacy, with a certificate from the medical officer of the asylum as to the mental and bodily condition of the patient. While in the asylum the patients are visited by the Lunacy Commissioners, and all have the right of private correspondence with them. At the end of each year of detention after the third, the medical officer of the asylum has to certify that the patient is still insane and requires asylum care.

Discharge of patients.

Patients are *discharged* from an asylum in Scotland, as from any other hospital, when the physician deems them recovered, or well enough to be at home.

Pauper patients cannot be discharged unrecovered unless some provision be made for them which the Board of Lunacy approves.

Property of lunatics. Income over £100.

The property of lunatics is very efficiently and economically safeguarded in Scotland. If the income be over £100 a year, the Court of Session will on application appoint as *curator bonis* either a person suggested by the relatives, or if deemed desirable some neutral person selected by the Court. The curator takes entire charge of the patient's means, and is personally answerable for his dealings with them, of which he must regularly submit a detailed account to the Accountant of Court. He has to find ample security, and is paid by a small commission. The expense of appointing a curator does not usually exceed £25. If the means of a lunatic are under £100 a year, a curator is appointed by the Sheriff, and the expense of appointment need not exceed £5.

Income under £100.

For the further protection of the lunatic, every person to whom a *curator bonis* has been appointed, on account of mental imperfection, whether the condition amounts legally to lunacy or not, and whether the patient be in an institution or a private dwelling, or at his own home, is subject to visitation by the Lunacy Commissioners, with a view to secure that he is rightly cared for, and is receiving the full and proper benefit of his means.

Visitation by Lunacy Commissioners.

Crimes by insane persons.

When crime is committed in Scotland by persons deemed insane, they are committed to the asylum of the district at the instance of

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the Procurator-Fiscal, pending investigation in open Court, held within one week and after public intimation in the newspapers. If found insane by the Sheriff on trial, they are committed as dangerous lunatics to the asylum until cured, or until it is certified that they can be liberated without danger to the lieges. Grave crime committed by a lunatic in an asylum involves accusation before the Court, a plea of insanity in bar of trial, and committal to the Criminal Department of Perth Prison during Her Majesty's pleasure.

Or Ireland.—

Irish Lunacy administration.

Lunacy Administration in Ireland.[1]

Relation of Irish to English and Scotch lunacy laws.

The Lunacy Law of Ireland approximates rather to the English than to the Scotch model, but presents many important differences from both.

Inspection of lunatics. Act of Geo. IV. Inspection by Inspectors-General of Prisons. 8 & 9 Vict. c. 107. Inspectors of lunatics. Duties of.

Inspection of Lunatics.—Originally, by an Act passed early in the reign of George IV., it was arranged that the Inspectors-General of Prisons in Ireland should be empowered to inspect annually every madhouse and place where lunatics or idiots are confined. Subsequently, under 8 & 9 Vict. c. 107, the duties of the Inspectors of Prisons as regards lunatics and lunatic asylums were transferred to "one or two duly qualified and experienced persons" to be appointed by the Lord Lieutenant "to act as inspectors of lunatics in Ireland." The duties thus assigned to these officers were to visit every licensed house for the reception of lunatics at least once in every six months; to report annually in the month of September to the Lord Chancellor of Ireland and to the Lord Lieutenant on the condition of each such house, etc.; to visit at least once a year every asylum and every gaol-workhouse or other place for the detention of lunatics; to inquire into the legality of their detention, and generally into the care and management they receive. It is an honourable distinction of these earlier Irish statutes that they seemed to have been framed with a special eye to checking "restraint" and "coercion," into the particulars of which the inspectors are always directed to make inquiry.

District asylums. Authority of Lord Lieutenant in regard to.

District Asylums.—In Ireland asylums called "district asylums" are built on the authority of an order from the Lord Lieutenant in Council. This authority fixes also the size of the district, which consists of one or more counties (never less than a county, as in the Scottish "districts"), or cities, or cities and counties. The Lord Lieutenant in Council appoints (1 & 2 Geo. IV. c. 33) certain persons, whose number cannot exceed eight, to be Commissioners for general control and correspondence, and for the superintending and directing, the erection, establishment, and regulation of all such asylums. These Commissioners are, as such, unpaid. The Inspectors of Lunatics, however, are members of this Commission, and the Chairman of the Board of Public Works in Ireland. Practically it has

Commissioners.

[1] For this sketch of Irish Lunacy Administration the author is indebted to Dr. Conolly Norman, Medical Superintendent, Richmond District Asylum, Dublin, and one of the editors of the *Journal of Mental Science*.

been carried on as a department of the Board of Public Works, which supplies it with the offices, clerks, etc. The Commission or Board of Control are empowered to erect asylums for such districts as the Lord Lieutenant shall constitute, and all district asylums, buildings, lands, and appurtenances are vested absolutely in that body. The Board of Control alone is authorised to make, under the sanction of an Order in Council, additions to a district asylum or structural alterations therein. Thus the construction of public asylums in Ireland is the work of a Government department.

Position of Board of Control.

The funds for the construction and alteration of district asylums are supplied by the Board of Control, which again borrows from the Treasury. The loans are repaid by the county or counties constituting the district by means of instalments levied by the mode of Grand Jury presentment through the county cess.

Funds for construction, etc., of district asylums.

The presentments for money for asylum purposes are compulsory. If they be duly certified, the Grand Jury has no power of rejecting them, and the judge must fiat them in due course.

The moneys required for upkeep, salaries, ordinary repairs (not coming under the head of alterations), food and clothing, and everything coming into maintenance, are also a county charge. An estimate is prepared in advance for each half-year under the hands of the Inspectors of Lunatics, and each contributory fiscal body in the district contributes its quota raised by the method of presentment above described.

The ordinary current business of a district asylum is performed by a body called the Board of Governors. The governors are appointed by the Lord Lieutenant, who of late years generally accepts the nominees of the Grand Juries or corporations constituting the fiscal authorities of the district. The governors are unsalaried.

Board of Governors.

The staff of each asylum is fixed by a special order of the Lord Lieutenant, and the salary or wages of every individual on the staff are fixed in the same way.

The office of resident medical superintendent is statutory. The medical superintendent is appointed by the Lord Lieutenant, and can be dismissed by him at pleasure. Certain other persons designated generally as "officers," such as clerks, matrons, chaplains, etc., are appointed by the governors, subject to the approval of the Lord Lieutenant, and can be dismissed only under the same conditions. The "servants" (attendants, nurses, etc.) are appointed, and can be dismissed, by the Board of Governors (30 & 31 Vict. c. 118).

Resident medical superintendent.

Members of the staff of district asylums can receive pensions after a period of fifteen years' service if invalided, or if they have attained the age of fifty years; such pensions are given by resolution of the Board of Governors, "if in their discretion they think fit, but not otherwise," and the grant must be confirmed by the Lord Lieutenant (53 & 54 Vict. c. 31).

Pensions, etc.

The accounts of each district asylum are audited annually by the Local Government Board auditor of the district. The Treasury

Audit of accounts.

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contributes a grant of rate in aid for the part maintenance of the insane poor on the same terms as in England.

Power of Lord Lieutenant to make rules.

The Lord Lieutenant in Council has the power of making rules and regulations for the control and guidance of the officers and servants of asylums (30 & 31 Vict. c. 118); and has also the power to make, frame, and establish, or upon the suggestion and recommendation of the Commissioners of Control, to adopt and authorise, any rules and regulations for the good conduct and management of district asylums (1 & 2 Geo. IV. c. 33).

Scope of rules.

The rules thus made or authorised form the basis of the management of the public asylums in Ireland. They lay down in a rather vague way the duties of the Board of Governors, and they are very unsatisfactory in this respect, as they say nothing about the relations of the Board of Control to the Board of Governors, which are practically very difficult and complicated. They also define in a partial fashion the duties and position of the medical and lay staff. They lay down the methods of admission and discharge of certain classes of patients, matters which are elsewhere directly statutory.

Admission of patients.

In cases of urgency.

With regard to admission, "insane persons requiring treatment in district asylums" can be admitted by order of the Board of Governors (or, pending their meeting, and in cases of urgency, by order of the medical officer of the asylum), on a form of application consisting of (1) a declaration made in presence of a magistrate that the patient is insane and destitute, and giving the names of two relatives; (2) statement of particulars of case; (3) medical certificate; (4) undertaking to remove the patient on notification from governors or inspector. These patients are admitted "after having been examined by a member of the medical staff," "who shall satisfy himself of the legality and correctness of the admission form." The medical officer admitting thus forms a second certifying physician, and also becomes responsible for the accuracy of the admission form. Admissions by this method are naturally discouraged in favour of simpler means.

Paying patients.

Paying patients can be admitted only on an order from the governors and from the inspectors. This provision necessitates great delay, for which reason, and since it is laid down that paying patients are to receive exactly the same treatment as free patients, few paying patients are admitted to Irish district asylums.

Admission form.

The admission form is generally similar to that in use for free patients, but includes an engagement to pay, and two medical certificates.

Conversion of free into paying patients.

There is a provision by which free patients can be converted into paying after admission. This is not unfrequently taken advantage of. Payments for patients must not exceed the average cost of maintenance (presumably for the previous year).

Admission to district asylums.

Patients can also be admitted to district asylums by order of the Lord Lieutenant (criminals in this way only), by order of the Lord Chancellor (Chancery patients in this way only), by order of the inspector, and finally under the provisions of the Dangerous Lunatics Act (30 & 31 Vict. c. 118).

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To understand this statute we must remember that the public patients in Irish asylums are not paupers. They were originally looked upon as potential or actual criminals. The law originally provided that a lunatic having been arrested under circumstances denoting an intention of committing an indictable offence should, in default of bail being given by some relative or friend for his safe keeping and good behaviour, be confined in the county jail until he had recovered or had ceased to be dangerous. These provisions are repeated in the statute with which we are dealing (30 & 31 Vict. c. 118). The requirements are (*a*) apprehension on information under circumstances denoting an intention of committing any indictable offence; (*b*) certificate from the medical officer of the dispensary district that the person apprehended is a dangerous lunatic or dangerous idiot; (*c*) warrant founded upon the information and certificate signed by two justices of the peace before whom, sitting together, the lunatic or idiot shall, on apprehension, have been brought.

Dangerous Lunatics Act 1867. Public patients in Ireland not paupers. Originally regarded as actual or potential criminals. This view reproduced in Dangerous Lunatics Act 1867. Requirements of; (*a*) apprehension; (*b*) certificates; (*c*) warrant.

In this way most patients are admitted to district asylums. The Act provides a machinery (that of the police courts), in lieu of the English poor law machinery, whereby poor and ignorant people are saved expense and the trouble of formalities which they do not understand.

Police court instead of, as in England, poor law machinery utilised.

The discharge of patients from district asylums can be effected under an order of the Board of Governors, when it is certified that the individual has recovered, or has ceased to be, or is not, dangerous (in the case of persons who had been admitted under 30 & 31 Vict. c. 118, as dangerous lunatics or idiots), or under an order from the Lord-Lieutenant, the Lord Chancellor, or the Inspectors of Lunatics.

Discharge of patients from district asylums.

Under 38 & 39 Vict. c. 67, it is allowable for the Governors to order the discharge of a patient on a month's trial, and it is allowable to pay for his keep at a rate not exceeding the cost of his keep in the asylum. The method of discharge on trial has been used in few asylums, and the allowance for maintenance while absent on trial, which might have been developed into a system of boarding out, has never been taken advantage of.

Discharge on trial.

Private Asylums.—"Even a single insane patient cannot be received in an unlicensed house (save by a relative or guardian deriving no profit from the charge, or by order of the Lord Chancellor) without such an order and medical certificates as are required on admission to a licensed house" (*Colles on the Lunacy Regulation (Ireland) Act*). Under the Act 5 & 6 Vict. c. 123, provision is made for the granting of licence for the keeping of a house for insane persons; such licence to be granted by the justices in general or quarter sessions; the keeping of lunatics without such licence is a misdemeanour. The licence for such house is revocable by the Lord Chancellor on a recommendation from one of the inspectors.

Private asylums. Reception of patients.

Grant of licences.

Patients who are under the care of the Chancellor can be admitted and discharged only under his order.

Chancery patients.

Other patients are admitted under an order in a prescribed form

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Order for admission of other patients. Medical certificates.

under the hand of the person by whose direction they are sent (5 & 6 Vict. c. 123). No person can be received or detained without medical certificates from two duly qualified medical practitioners. The certifying physicians must not be partners, must separately see and personally examine the patient not more than seven clear days previous to his confinement, and the date of their certificates must be the date of their examinations. If not signed by two medical practitioners, the certificate must state the reasons preventing the second certificate being procurable, and such second certificate must be procured within fourteen days after the patient's admission to such licensed house. No certificate can be signed by the proprietor or regular medical attendant of such licensed house, or by the son, brother, father, or partner of such proprietor or professional attendant.

Reception and detention without certificates a misdemeanour. Notices.

Reception and detention of a patient without due order and certificates is a misdemeanour. Notice of reception, with copy of order and certificates, and likewise notice of escape, removal, or death of a patient, are to be transmitted to the inspectors within two clear days. All these notices are to be preserved by the inspectors, and entered in a register for the purpose.

Discharge by Lord Chancellor. Discharge by inspector.

The Lord Chancellor can set at liberty any patient confined in an asylum on being satisfied that he is not insane. If an inspector doubts the propriety of detaining a patient in a licensed house, he may, after visiting him twice at fourteen days' interval, in company with the managing officer and principal medical officer of the nearest district asylum, order his discharge, in conjunction with those officers (5 & 6 Vict. c. 123).

Amendment of certificates, etc.

In the case of incorrect or defective certificates or orders, amendments may be made within seven days, and the sanction of an inspector obtained. In case this is not done, it is in the power of the inspector to order the patient's discharge. These regulations apply equally to admissions to district asylums.

Removal for health.

Patients in private asylums can be sent to any specified place for the benefit of their health, with the consent of the inspectors, and can be allowed to be absent on trial under similar conditions.

Recapture of patients.

Patients escaping from either private or district asylums can be recaptured within fourteen days.

Assaults, etc., on patients.

It does not appear that there is any provision in the Irish law under which assault on a patient, or his injury by his custodian, is specially punishable; nor is there any provision against indecent assault upon a lunatic except that contained in the Criminal Law Amendment Act 1885 (48 & 49 Vict. c. 69), and the words idiot or imbecile occurring there have been interpreted in an Irish Court to refer only to persons congenitally weak-minded.

Criminal lunatics.

Criminal Lunatics: the Central Criminal Asylum.—The law as to criminal responsibility appears to be the same in Ireland as in England, and the procedure, with trifling difference, identical. The judges differ equally in the two countries as to their precise views of what constitutes a criminal lunatic. When, however, a person is found insane on indictment, or is found to be insane at the

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Law as to criminal responsibility and procedure in Ireland practically same as in England.

period when the offence was committed, the Court orders that he be detained during the pleasure of the Lord-Lieutenant, just as in England he is detained during the pleasure of Her Majesty (1 & 2 Geo. IV. c. 38, and 46 & 47 Vict. c. 38). By the former Act the Lord-Lieutenant has also the power to order that any person confined in prison, who is certified by two medical men to be insane, be removed to the Central Criminal Asylum, and there detained until he shall have recovered or till the expiration of his sentence. On the expiration of his sentence the patient of the latter class, if unrecovered, can be transferred as an ordinary patient to the asylum for the district to which he belongs.

Central Criminal Asylum.

The Central Criminal Asylum at Dundrum, near Dublin, was erected by the Irish Commissioners of Public Works under the Act 8 & 9 Vict. c. 107. Its buildings, property, etc., are vested in them. The asylum accounts are annually submitted to the Treasury, which supplies the funds for maintenance of the building under a special vote in the Irish estimates. The employees appear to be rated as civil servants, and the superior officers are appointed directly by the Lord-Lieutenant. There is no board of management or direction, but the Inspectors of Lunatics, who report annually in detail on the management of the institution, appear to fulfil that function.

Insane in workhouses.

Peculiar position of.

The Insane in Workhouses.—The position of the insane in Irish workhouses is most peculiar. There are about 4000 lunatics and idiots in workhouses, for the detention of the great majority of whom there is no legal warrant. It would seem that in the ordinary workhouse the lunatic can discharge himself like any other pauper if he only knows his powers, and that there is no warrant or authority for his forcible detention. Nevertheless, by one of those curious compromises of which Irish practice with regard to the insane is full, nearly every workhouse contains its lunatic wards, where the occupants are mostly imbeciles or tranquil lunatics.

Removal of lunatics from district asylum to workhouse.

There is a provision by which (38 & 39 Vict. c. 67) lunatics who are certified as not dangerous may be received from a district asylum into a workhouse, with the consent of the Local Government Board and the inspectors, and may be retained on the asylum books and paid for by the asylum, which continues to receive for such lunatics the Treasury rate in aid. This arrangement has been adopted in only three districts, and the results are said not to be encouraging.

Charitable institutions.

Charitable Institutions.—These are specially provided for under the 49th section of the Act 5 & 6 Vict. c. 123, which opens them to visitations by or under the order of the Lord Chancellor, and to visits and inquiries by the Inspectors of Lunatics. The provisions with regard to orders, certificates, and notices are the same with regard to paying patients in charitable institutions and in private asylums. There are but two charitable institutions in the country, St. Patrick's Hospital, founded by Dean Swift, and the little Stewart Institution for imbeciles.

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Number of registered insane in Ireland.

The number of registered insane in Ireland at the beginning of the year 1895 was as follows :—

	Males.	Females.	Total.
In District Asylums . . .	7002	5769	12,771
,, Central Asylum, Dundrum .	140	21	161
,, Private Asylums and Charitable Institutions	293	353	646
,, Workhouses	1686	2390	4076
,, Prisons	...	1	1
	9121	8534	17,655

Chancery lunatics.

Power of Lord Chancellor of Ireland in relation to.

Chancery Lunatics.—The powers of the Lord Chancellor of Ireland are generally similar to those of the English Chancellor with regard to lunatics, the former official being in Ireland "instructed by virtue of the Queen's sign-manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind" (34 Vict. c. 22).

Returns by Inspectors of Lunatics, magistrates, etc.

The Inspectors of Lunatic Asylums are required to make a return to the Chancellor's Registrar of all medical certificates and orders received by them under the Act 5 & 6 Vict. c. 123, and similar returns are required from the magistrates committing lunatics or idiots under the Act 30 & 31 Vict. c. 118, and from medical superintendents, managers, and proprietors of lunatic asylums, and generally from any person treating another as a person of unsound mind.

Inquiry, how obtained.

An inquiry into the insanity of an alleged lunatic may be obtained upon a report of a medical visitor appointed by the Lord Chancellor, or upon a petition supported by the affidavit of two medical men.

Where jury not demanded.

Where the alleged lunatic does not demand an inquiry before a jury, the Lord Chancellor may, if he is satisfied of the insanity of the alleged lunatic, make an order declaring him of unsound mind.

Where jury demanded. Trial in superior courts, or before Quarter Sessions or Recorder.

If the alleged lunatic demands an inquiry before a jury, and the Lord Chancellor is satisfied that he is competent to form and express such a wish, a commission is issued usually to the Registrar in Lunacy, before whom and a jury the matter is tried. But the Chancellor has the power of ordering that the question be tried in one of the superior courts of common law or before the Chairman of Quarter Sessions or the Recorder of the district.

Scope of inquiry.

The inquiry in any case is whether or not the alleged lunatic is of unsound mind and incapable of managing his person and property.

Procedure.

In inquisitions before the Registrar, after the pleadings have been heard and the evidence gone into, the alleged lunatic is examined personally by the commissioner and the jury, counsel in the case and all the other witnesses being absent.

Where it is established to the satisfaction of the Chancellor that any person is of unsound mind and incapable of managing his affairs,

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Power of Chancellor where property small. Appointment of committees. Visitation.

and that his property does not exceed £2000 in value, or that the income thereof does not exceed £200 per annum, the Chancellor may without directing an inquiry under commission make such order as he thinks fit for the application of the lunatic's property.

The Chancellor has the power of appointing committees of the person and estate of a lunatic, as under the English law.

Visitation.—There are no permanent salaried legal and medical visitors as in England. Fees for legal and medical visitors are paid in each case out of the estate. These officers are to visit as the Lord Chancellor shall direct, and to visit private patients four times a year, and patients in establishments once a year. The Registrar in Lunacy is required to visit every district asylum at least once a year, and private asylums twice a year, and cases in private care whenever circumstances require. In addition to the legal and medical visitors, the Chancellor appoints two lady visitors for the city and county of Dublin to visit insane patients under the Court when directed so to do.

The Lunacy Regulation Act (Ireland), 34 Vict. c. 22, and the General Orders made pursuant thereto, lay down methods of procedure in lunacy with great exactitude. They form the only satisfactory and methodical portion of Irish Lunacy Law. Outside these the law is entirely uncodified, and is scattered through a multitude of statutes, the provisions of which are inept and obsolete, contradictory and perplexing.

3. This Act shall come into operation, save as in this Act otherwise expressly provided, on the first day of May one thousand eight hundred and ninety.

Commencement. (Act of 1889, s. 1.)

Commencement of Act of 1889.

This Act.—1st May 1890 was the date appointed for the commencement of the Lunacy Act 1889 (53 & 54 Vict. c. 41, sec. 1), "save as therein expressly provided." The sections in the Act of 1889 covered by this saving clause were—sec. 12, giving protection to persons signing and carrying out orders, reports, and certificates; sec. 56, restrictions on new licences; sec. 58, provision for registration of hospitals; sec. 64, prohibition of agreements between local authority and subscribers; sec. 71, contracts for reception of lunatics of borough not to be determined without consent of a Secretary of State; sec. 88, power of Lord Chancellor to make rules. All of these sections took effect on the passing of the Act, viz. 26th August 1889.

The Act of 1889 was repealed by sec. 342, *post*, and Schedule v., *post*, of the Act of 1890, with a saving of any jurisdiction exercised, etc., under those provisions above mentioned which came into force on its enactment.

Act of 1890, where retrospective.

Save . . . expressly provided, viz. sec. 330, protection to persons putting Act in force, *post*, which took effect on the passing of the Act, 26th March 1890.

Sec. 4. (1). Commencement of Act of 1891.

The Act of 1891 (54 & 55 Vict. c. 65) took effect on 5th August 1891.

Part I.

RECEPTION OF LUNATICS.

Reception Orders on Petition.

Private patients not found lunatic by inquisition to be received only under order of judicial authority. (Act of 1889, s. 2, subs. (1).

4. (1) Subject to the exceptions in this Act mentioned, a person, not being a pauper or a lunatic so found by inquisition, shall not be received and detained as a lunatic in an institution for lunatics, or as a single patient, unless under a reception order made by the judicial authority hereinafter mentioned. A relative of the person applying for an order under this section, or of the lunatic, or of the husband or wife of the lunatic, shall not be capable of making such order.

This subsection re-enacts subs. (1) of sec. 2 of the Lunacy Act 1889.

Exceptions.

Subject to the exceptions, viz. urgency cases, sec. 11, *post*; criminal lunatics, sec. 340, subs. (1), *post*. For law as to criminal lunatics, see Criminal Lunacy Acts, *post*.

Pauper.—Definition of, sec. 341, *post*; as to detention of, see secs. 13-24, *post*.

Lunatic.—Definition of, sec. 341, *post*.

Inquisition.—Definition of, sec. 341, *post*. For law as to, see secs. 90-107, *post*. As to reception of, see sec. 23, *post*.

Orders under Act of 1889.

Shall not be received.—Some doubt arose as to whether these words, taken in conjunction with the words "hereinafter mentioned," in this subsection, did not invalidate orders by justices appointed under the Act of 1889. Sec. 342, *post*, was probably wide enough to meet the difficulty; but it was removed by an express provision in the Act of 1891, see sec. 24, subs. (5) of that statute, *post*.

And detained.—The detention of a lunatic is justifiable at common law if necessary for his safety or the safety of others.[1]

Institution for lunatics.—Definition of, sec. 341, *post*.

Single patients.

Single patient.—The term "single patient" is impliedly defined by sec. 315, *post*. No licence is necessary for the reception and detention of a single patient. The provisions of the Act with reference to

[1] *Brookshaw* v. *Hopkins*, 1773, Lofft. 235-240; *Anderdon* v. *Burrows*, 1830, 4 C. & P. 210; *Scott* v. *Wakem*, 1862, 3 F. & F. 328; *Symm* v. *Fraser*, 1862, *ib.* 859.

Sec. 4 (1), (2).

single patients must, however, be complied with. See Commissioners' Circular as to, 1893, in Appendix. There is nothing in the Act to prevent the relatives of a lunatic from keeping and taking care of him. But the income of such a lunatic cannot be dealt with otherwise than under the authority of the jurisdiction in lunacy.

Reception order.—Definition of, sec. 341, *post.*

Judicial authority.—As to, see sec. 9, subs. (1), *post.*

Relative.—Definition of, sec. 341, *post*; and see "relation" in sec. 22, *post*, and note thereon.

Such order.—As to urgency orders, see sec. 11, *post.*

(2) The order shall be obtained upon a private application by petition accompanied by a statement of particulars and by two medical certificates on separate sheets of paper.

Forms 1, 2, 8. (Act of 1889, s. 2, subs. (2).)

This subsection re-enacts subs. (2) of sec. 2 of the Lunacy Act 1889.

The order.—See note to subs. (1), *supra.*

Private application, i.e. to the judicial authority, see subs. (1). As to obligation of secrecy, see sec. 6, subs. (3), *post.*

Petition.—Form of, Form 1, Sched. ii., *post.* As to who should be petitioner, see sec. 5, subss. (1), (2), *inf.*

Statement of particulars.—Form of, Form 2, *ib. post.*

Medical certificates.—Form of, Form 8, *ib. post.* As to requisites of, see sec. 28, *post.*

Medical certificates.

Subject to rules made under this Act, these forms may be used with such modifications as circumstances may require, and if so used shall be deemed to be sufficient, sec. 339, *post.*

There does not seem to be anything to prevent a medical practitioner who is also a specially appointed magistrate from certifying. Of course he should not act as magistrate in a case in which he had certified.

5. (1) The petition shall be presented, if possible, by the husband or wife or by a relative of the alleged lunatic. If not so presented it shall contain a statement of the reasons why the petition is not so presented and of the connection of the petitioner with the alleged lunatic, and the circumstances under which he presents the petition.

Petition for reception order. Form 1. (Act of 1889, s. 3, subs. (1).)

This subsection re-enacts subs. (1) of sec. 3 of the Lunacy Act 1889.

The petition.—Form and use of, see note to sec. 4, subs. 1 *sup.*

Shall be presented.—This gives effect to the recommendation of the Dillwyn Committee of 1877, see *ante* p. 74. It had a double object, first to secure the presentation of the petition by a responsible

Why to be presented by relative.

Sec. 5 (1).

person, and secondly to lay a basis for the undertaking referred to in subs. (3) *post*.

Exceptional cases.

If possible.—There are cases in which the signature of the husband or wife or a relative of an alleged lunatic could not be obtained, if at all, in time. "For example," say the Commissioners in Lunacy in their 33rd Annual Report,[1] "a foreigner, in good or fair circumstances, becomes insane, and unless his banker or agent, his fellow-clerk, or the landlord of his hotel comes forward to sign the order, he must be treated, to his manifest disadvantage, as a lunatic wandering at large or not under proper care or control, and must be sent, through the police or a relieving officer, to a pauper Asylum, with, in all likelihood, especially in London, a preliminary detention in a workhouse."

Relative.—Definition of, sec. 341, *post*.

Lunatic.—Definition of, sec. 341, *post*.

It shall contain.—In addition to the particulars mentioned in the subsection, an urgency order made before a petition is presented must be referred to in the petition, sec. 11, subs. (5), *post*. Moreover, if a previous petition has been dismissed, the facts relating to it, so far as known to the petitioner, must be given, sec. 7, subs. (4), *post*.

Form of where not presented by relative.

A statement of the reasons . . . the connection . . . and the circumstances.—See Form 1, Sched. ii., *post*.

The Commissioners in Lunacy, in the report above cited,[2] say, "We think, however, that the order or authority should state distinctly that no relative is available, and should give more precisely than by the present form is required the reason for the signature. Added to this, power might be given to us to inquire into the circumstances of the signature, and to permit the substitution, as the person entitled to discharge, of some relative or other person willing to assume the responsibility, or of the person who makes or proposes to make the payments for the patient's maintenance. This would be in accordance with one of the recommendations of the Select Committee."[3]

Statement of reasons.

In this passage of the Report there are three distinct recommendations—(*a*) that a petition, not presented by a relative, should contain a detailed explanation of the fact,—this the clause now under consideration effects; (*b*) that the Commissioners in Lunacy should have a power of substitution in such cases,—this is conferred by sec. 48, *post*; (*c*) that the Commissioners should have power to inquire into the circumstances of the signature,—this they do not, but (see sec. 6, subs. (4), *post*) the "judicial authority" does, possess.

Meaning of "reasons," "connection," "circumstances."

The reasons—the connection—the circumstances.—The meaning of these terms is clear from Form 1, Sched. ii., *post*, as well as from the words of this subsection. The first is limited to an explanation of the fact that the petition is not presented by the husband or wife of the alleged lunatic, or by a relative. Under the second the applicant will state the ground of relationship or of interest on which he comes forward as a petitioner. The third refers to the facts in the case of the alleged lunatic which justify his intervention.

[1] At p. 129.
[2] 33rd Annual Report, at p. 129.
[3] *i.e.* the Dillwyn Committee, 1877, *v. ante* p. 74.

The wilful misstatement of any material fact in a petition is a misdemeanour, sec. 317, subs. (1), *post*.

As to the protection of petitioners, see sec. 330, *post*.

Sec. 5 (2), (3).

(2) No person shall present a petition unless he is at least twenty-one years of age and has within fourteen days before the presentation of the petition personally seen the alleged lunatic.

(Who may petition. Act of 1889, s. 3, subs. (2).)

This subsection re-enacts subs. (2) of sec. 3 of the Lunacy Act 1889.

Present a petition.—As to presentation of, see subs. (1), *sup.*

Twenty-one years of age, i.e. at the date when the petition was presented. This condition was recommended by the Lunacy Commissioners in their 33rd Annual Report.[1] It applies also to urgency orders, see sec. 11, subs. (4), *post*.

Within fourteen days.—The date on which the petition is presented is excluded; that on which the petitioner last saw the alleged lunatic is included. "Days" means all days, including Sundays, etc.

In the case of urgency orders the period is two days, sec. 11, subs. (4), *inf*.

Personally seen.—No examination is necessary.

Lunatic.—Definition of, sec. 341, *post*.

This subsection does not apply to paupers or lunatics so found by inquisition. See sec. 4, subs. (1), *sup.*, and notes.

(3) The petitioner shall in the petition undertake that he will personally, or by some one specially appointed by him, visit the patient once at least in every six months; and the undertaking shall be recited in the order.

(Undertaking by petitioner. Act of 1889, s. 3, subs. (3).)

This subsection re-enacts subs. 3 of sec. 3 of the Lunacy Act 1889.

In the petition undertake, etc.—See form of petition, Form 1, Sched. ii., *post*.

Personally visit . . . six months.—This embodies a recommendation of the Dillwyn Committee, *ante* p. 74.

An interesting note on this recommendation by the Commissioners in Lunacy will be found in the Report to which reference has already been made.[2] "By the Act 9 Geo. IV. cap. 41, being the Act of Parliament which, up to 1832, regulated the care and treatment of the insane in Licensed Houses, it was provided that the person by whose authority a patient was admitted should personally, or by a deputy specially appointed, visit the patient

9 Geo. IV. c. 4.

[1] At p. 129.

[2] 33rd Annual Report, at p. 129.

Sec. 5 (3), (4).

2 & 3 Will. IV. c. 107. 8 & 9 Vict. c. 100.

once at least in every six months, though no special penalty was imposed in case of non-compliance. A similar provision was inserted in the draft of the repealing and amending Act (2 & 3 Will. IV. c. 107), but was struck out of the Bill by the House of Lords; and in 1845, when the present Act[1] was passed, it was not re-inserted. Since then the principle has been adopted in the case of lunatics so found by inquisition, whose Committees enter into an undertaking to visit them periodically." After justifying the recommendation of the Dillwyn Committee on the ground that it is right to enforce on the friends of patients the obligation to make inquiries after their welfare, the Commissioners add: "To enforce visits of this kind under a penalty would, we think, be impossible, but it occurs to us as feasible to subjoin to the form of authority for reception an undertaking by the person signing it to visit either personally or by deputy once in six months."

Enforcement of undertaking.

Although the Commissioners hold that it would be impossible to enforce the obligation of personal visitation under a penalty, possibly a breach of the undertaking above referred to could be dealt with as a contempt of court.

"Months."

Months, i.e. calendar months. Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3. The time runs from the date of the reception in the institution for lunatics.

Recited in the order.—See Form of order, Form 3, Sched. ii., *post.*

Form 2. (Act of 1889, s. 3, subs. (4).)

(4) The petition shall be signed by the petitioner and the statement of particulars by the person making the statement.

This subsection re-enacts subs. (4) of sec. 3 of the Lunacy Act 1889.

Petition.—Form of, Form 1, Sched. ii., *post.*

Statement of particulars.

Statement of particulars.—Form of, Form 2, Sched. ii., *post.* The petitioner need not sign the statement of particulars unless he make it. When the petitioner is not the person who signs the statement, he must add the particulars mentioned in Form 2, Sched. ii., *post.*

As to construction of statement, see note to sec. 6, subs. (1), *inf.*

It will be observed that the statement of particulars mentioned in this statement is quite different from the statement to be embodied in the petition if not presented by a relative. See note to sec. 5, subs. (1), *ante.*

Procedure upon petition for a reception order.

6. (1) Upon the presentation of the petition the judicial authority shall consider the allegations in the petition and statement of particulars and the evidence of

[1] *i.e.* 8 & 9 Vict. c. 100.

lunacy appearing by the medical certificates, and whether it is necessary for him personally to see and examine the alleged lunatic; and, if he is satisfied that an order may properly be made forthwith, he may make the same accordingly; or, if not so satisfied, he shall appoint as early a time as practicable, not being more than seven days after the presentation of the petition, for the consideration thereof; and he may make such further or other inquiries of or concerning the alleged lunatic as he may think fit. Notice of the time and place appointed for the consideration of the petition (unless personally given to the petitioner) shall be sent to the petitioner by post in a prepaid registered letter addressed to him at his address as given in the petition.

Sec. 6 (1).

Form 3. (Act of 1889, s. 4, subs. (1).)

This subsection re-enacts subs. (1) of sec. 4 of the Lunacy Act 1889.

The presentation.—As to who may present, see note to sec. 5, subss. (1) and (2), *ante.*

The petition.—Form of, Form 1, Sched. ii., *post;* contents of, *ib.*, and notes to preceding section, *ante.*

The judicial authority.—Definition of, sec. 9, subs. (1), *post.*

Shall consider.—If the case would delay or interfere with his ordinary jurisdiction, a county court judge or stipendiary magistrate may decline to undertake it; see sec. 9, subs. (3), *post*, and Lord Chancellor's and Home Secretary's Rules, Appx.

The allegations.—As to what these are, see notes to sec. 5, subs. (1), *ante.*

Statement of particulars.—Form of, Form 2, Sched. ii., *post;* allegations in, *ib.*, and note to sec. 5, subs. (4), *sup.*

Construction of statement of particulars.

The answers in the statement of particulars are not to be dissociated from the context, dissected into parts, and read as to each of those parts as if it had no relation to or dependence upon the rest. The statement will be construed as a whole, and if any dispute as to its sufficiency arise, the question will be whether, properly understood by a reasonable mind, it gives or does not give all the particulars which are required.[1] The case[1] from which this proposition is taken was decided under the Lunacy Act of 1853 (16 & 17 Vict. c. 96, Sched. A, No. 1). But it is still valuable as an illustration. The plaintiff was taken to and detained in the defendant's asylum as a person of unsound mind, under an order signed by her husband, and containing a statement of questions and answers concerning her. To the question

Lowe v. *Fox.*

[1] *Lowe* v. *Fox*, 1887, 12 App. Cas. 206.

Sec. 6 (1).

"Age," the answer was "Fifty." To the question "Whether first attack," the answer was "For the last twenty years has been subject to what is termed hysteria." To the question "When and where previously under care and treatment," the answer was "During this period of twenty years has been constantly under treatment." The House of Lords, affirming the decision of the Court of Appeal,[1] held that the answers were sufficient and not misleading. If the lady had been subject to, and under treatment for, hysteria for twenty years, this was a fact which the person making the statement of particulars was entitled and bound to disclose. He mentioned the hysteria specifically, and excluded from his answer as to previous treatment all reference to "care," a term which would be applicable to patients under the care of a person who would restrain their liberty. While, however, similar answers would doubtless still be held sufficient, it will be well for persons making statements of particulars under the present Act to be *ex abundanti cautelâ* a little more explicit. No difficulty, for instance, would have arisen if the hypothesis of a previous attack of insanity, or of care as a lunatic, had been negatived expressly instead of by implication.

The wilful misstatement of any material fact in a statement of particulars is a misdemeanour, see sec. 317, subs. (1), *post*.

As to protection of persons signing such statements, see sec. 330, *post*.

Evidence of lunacy.

The evidence of lunacy . . . medical certificates.

Medical certificates, form of, Form 8, Sched. ii., *post*.

Must be signed by "medical practitioner," sec. 28, subs. (1), *post*.
Definition of medical practitioner, sec. 341, *post*.

One must be signed by usual medical attendant, if possible, in case of private patient, sec. 31, *post*. As to medical examination necessary before signing, sec. 29, *post*.

Must distinguish facts observed from facts communicated, sec. 28, subs. (2), *post*.

Who are disqualified from signing, secs. 30, 32, and 33, *post*.

Medical certificates, what evidence of.

Are evidence (1) of facts therein appearing;
(2) of judgment stated to have been formed thereon, as if the same had been verified on oath, sec. 28, subs. (4), *post*. As this proceeding is a *quasi*-judicial one, and under sec. 28, subs. (4), *post*, the certificate is to have the same effect as evidence given on oath, it would seem that if the practitioners signing the certificates are not present—as they have a right to be, see subs. (3) *inf*.—the date and signatures of the certificates should be proved on oath. See note to sec. 28, subs. (4), *post*.

Query, whether proof of date and signature of, necessary.

Wilful misstatement of any material fact in, is a misdemeanour, sec. 317, subs. (2), *post*.

Amendment of, by person signing, sec. 34, subs. (1), *post*.

[1] 15 Q.B.D. 667.

Amendment of, by Commissioners in Lunacy, sec. 34, subs. (2), *post*.

Sec. 6 (1).

As to protection of persons signing, see sec. 330, *post*.

Examination of alleged lunatic.

Personally to see and examine, if not satisfied, *e.g.*, with the evidence of lunacy appearing by the medical certificates, see subs. (2) *inf*.

The fact that the judicial authority has or has not seen the patient is stated in the reception order, see Form 3, Sched. ii., *post*. In the latter case the alleged lunatic has a qualified right to demand examination by another judicial authority, see sec. 8, subs. (1), *post*.

An order, *i.e.* a reception order, see definition of, sec. 341, *post*, and note to sec. 6, subs. (4), *post*. Form of, Form 3, Sched. ii., *post*. As to delivery of order, etc., to petitioner, see sec. 35, subs. (2), *post*. Wilful misstatement in reception order is a misdemeanour, sec. 317, subs. (1), *post*. Amendment of orders, sec. 34, subs. (1), *post*. As to use of forms, sec. 339, *post*.

Power to make order forthwith.

May make the same.—A reception order may therefore be made by the judicial authority on the presentation of the petition forthwith, and without any notice having been given to the alleged lunatic that a petition has been presented. This power will only be exercised, however, in the clearest cases; and the alleged lunatic has the right to claim examination before another judicial authority, sec. 8, subs. (1), *post*.

A judicial authority, being a relative of the petitioner or of the lunatic, or of the husband or wife of the lunatic, is incapable of making the order, sec. 4, subs. (1), *ante*.

Cannot dismiss petition on original presentation.

If not so satisfied.—Although not satisfied that the case is one in which an order may properly be made forthwith (*v.* preceding note), the judicial authority cannot dismiss the petition at this stage. He must appoint a time for its consideration. As to power of visitation in such cases, see subs. (2), *inf*.

Not being . . . petition.—The date of the petition is excluded.[1]

Further inquiries.

Further inquiries of.—Including (see subs. (2), *inf*.) but not confined to—for the subsection goes on "or concerning"—personal examination of the alleged lunatic.

Notice.

Notice.—There is no provision as to the length of the notice, or, where it is sent by post, as to its form. It must, however, acquaint the petitioner with the time and place appointed for the consideration of the petition. *Semble*, the notice should be given by, or by the direction of, the judicial authority. If sent by post it will be deemed to have reached the petitioner at the time at which the letter would have been delivered in the ordinary course of post (Interpretation Act 1889, 52 and 53 Vict. c. 63, sec. 26).

The time.—Not more than seven days after presentation.

Place.—The petition may be considered at any convenient place.

Consideration.—This is practically a reconsideration of the petition as it is considered on presentation.

[1] Cp. *Williams* v. *Burgess*, 1840, 10 L.J. Q.B. 10.

Sec. 6 (2), (3).

As given.—See Form 1, Sched. ii., *post.*

As to protection of persons putting the Act in force, see sec. 330, *post.*

(Visitation of lunatic by judicial authority. Act of 1889, s. 4, subs. (2).)

(2) The judicial authority, if not satisfied with the evidence of lunacy appearing by the medical certificates, may, if he thinks it necessary so to do, visit the alleged lunatic at the place where he may happen to be.

This subsection re-enacts subs. (2) of sec. 4 of the Lunacy Act 1889.

The judicial authority.—Definition of, sec. 9, subs. (1), *post.*

If not satisfied.—See note to preceding subsection, *sup.*

Evidence of lunacy, etc.—See note to preceding subsection, *sup.*

Medical certificates.—See note to preceding subsection, *sup.*

Visit.—The visit may be paid with or without previous notice to the alleged lunatic, and in the presence of any other person or persons or not, as the judicial authority may think fit.

The fact that such a visit has been paid or not is recited in the order, see Form 3, Sched. ii., *post.* If there has been no such visit, the alleged lunatic has a qualified right to claim examination before another judicial authority, sec. 8, subs. (1), *post.*

Besides visiting the alleged lunatic, the judicial authority may make further or other inquiries concerning him, subs. (1), *sup.*

Lunatic.—Definition of, sec. 341, *post.*

(Consideration of petition. Act of 1889, s. 4, subs. (4).)

(3) The petition shall be considered in private, and no one except the petitioner, the alleged lunatic (unless the judicial authority shall in his discretion otherwise order), any one person appointed by the alleged lunatic for that purpose, and the persons signing the medical certificates accompanying the petition, shall, without the leave of the judicial authority, be present at the consideration thereof.

This subsection re-enacts subs. (4) of sec. 4 of the Lunacy Act 1889.

The petition.—Form of, Form 1, Sched. ii., *post*; and see notes to secs. 5 and 6, subs. (1), *ante.*

Considered.—This applies to both original and adjourned considerations.

In private.—The original application also is to be made in private, sec. 4, subs. (2), *ante.* As to obligation of secrecy in regard to such proceedings, see subs. (5), *post.*

Unless the judicial authority, etc.—The petitioner has an absolute

Sec. 6 (3), (4).

right to be present. The alleged lunatic may be excluded by the judicial authority at his discretion. This discretion should, it is thought, only be exercised, however, on medical grounds. As to judicial authority, see sec. 9, subs. (1), *post*.

Any one person.—A friend, *e.g.*, or a legal or medical adviser.

Query whether, under this subsection, both counsel and solicitor for the alleged lunatic have a right to be present. If any difficulty of this kind arose, it could be obviated at once by leave of the judicial authority.

The persons signing . . . petition.—See notes to sec. 6, subs. (1), *sup*.

Without the leave of the judicial authority.—The judicial authority, if he adjourn consideration of the petition, may give notice to such persons as he thinks fit, and may summon any persons to attend before him, subs. (4), *inf*.

(Order on petition. Act of 1889, s. 4, subs. (5).)

(4) At the time appointed for consideration of the petition the judicial authority may make an order thereon or dismiss the same, or, if he thinks fit, may adjourn the same for any period not exceeding fourteen days for further evidence or information, and he may give notice to such persons as he thinks fit of the adjourned consideration, and summon any persons to attend before him.

This subsection re-enacts subs. (5) of sec. 4 of the Lunacy Act 1889.

At the time appointed, i.e. by the judicial authority on the presentation of the petition, see subs. (1), *sup*.

The petition.—See notes to subs. (1), *sup*.

The judicial authority.—Definition of, sec. 9, subs. (1), *post*.

May make an order thereon.—Form of order, Form 3, Sched. ii., *post*.[1]

A judicial authority, being a relation of the petitioner or of the lunatic, or of the husband or wife of the lunatic, is incapable of making the order, sec. 4, subs. (1), *sup*.

As to delivery of order, etc., to petitioner, see sec. 35, subs. (2), *post*.

As to authority of order, see sec. 35, subs. (1), *post*.

As to amendment of order, see sec. 34, subs. (1), *post*.

As to protection of persons putting Act in force, see sec. 330, *post*.

Wilful misstatement of any material fact in reception order is misdemeanour, sec. 317, subs. (2), *post*.

[1] Query whether the order can be brought up by *certiorari*. *Reg.* v. *Hatfield Peverel*, 1849, 14 Q.B. 298.

Sec. 6 (4), (5).

Dismissal of petition.

Dismiss.—As to dismissal of petition, see sec. 7, subs. (1), *post.*

The judicial authority cannot dismiss a petition on its original presentation. Refusal to adjudicate by a judicial authority after considering the evidence is not dismissal of the petition. He can only appoint a time for its further consideration, see sec. 6, subs. (1), *post.*

Adjournment of petition.

Adjourn.—Subject, however, to sec. 29, subs. (1), *post.*

Not exceeding fourteen days, etc., i.e. from the time appointed for consideration. All days are included; the day of consideration is excluded.

Further evidence.

Further evidence or information, etc.—The judicial authority may make any inquiries that he thinks fit, and may also (*a*) give notice to any persons whom he thinks interested in the inquiry of the adjourned consideration, and (*b*) summon any persons to attend, and give evidence, before him. Every judicial authority has the same power as regards the summoning and examination of witnesses, the administration of oaths, and otherwise—a term which would include costs,—as if he were acting in the exercise of his ordinary jurisdiction, sec. 9, subs. (2), *post.*

A County Court judge or a stipendiary magistrate is not required to act as a judicial authority so as to delay, or interfere with, the exercise of his ordinary jurisdiction, sec. 9, subs. (3), *inf.* And as to how this exemption is to be claimed, see Lord Chancellor's and Home Office Rules, *post*, Appx.

(Obligation of secrecy. Act of 1889, s. 4, subs. (6).)

(5) Every judicial authority and all persons admitted to be present at the consideration of any petition for a reception order, or otherwise having official cognisance of the fact that a petition has been presented, except the alleged lunatic and the person appointed by the alleged lunatic as aforesaid, shall be bound to keep secret all matters and documents which may come to his or their knowledge by reason thereof, except when required to divulge the same by lawful authority.

This subsection re-enacts subs. (6) of sec. 4 of the Lunacy Act 1889.

Every judicial authority.—Definition of, sec. 9, subs. (1), *post.*

Judicial authority must disclose to Commissioners in Lunacy, if so required, information as to circumstances of making or refusing an order, sec. 7, subs. (2), *post.*

Who may be present.

All persons admitted to be present.—As to who may be admitted, see sec. 6, subs. (3), *sup.*

The term "admitted" would include the case of persons to whom the judicial authority gave notice of an adjourned consideration

Sec. 6 (5).

under the preceding subsection, but query as to persons summoned by him to attend under the same subsection, unless they were held to be admitted in virtue of their summons to attend, or their case could be brought under the words "official cognisance." If such persons are not included in the prohibition as to secrecy, the object of the subsection, which clearly was to prevent the disclosure of anything that transpired at such proceedings, except by the alleged lunatic or his representative, or some one acting under "lawful authority," would be to a large extent defeated. All difficulty would be removed by the omission of the words "admitted to be."

Official cognisance.

Otherwise having official cognisance.—These words cover the case of a Registrar, Clerk of Court, any other officer of Court, the Commissioners in Lunacy (see sec. 151, subs. (5), *post*, and Form of Declaration in Sched. i., *post*), who may, however, disclose any such matters as they think proper for the better execution of their duties (see Declaration, Sched. i., *post*), and, in particular, communicate such information as they think fit, on the dismissal of the petition or the release of the alleged lunatic, to him or to any person who may satisfy them that he is a proper person to receive it (sec. 7, subs. (3), *post*), the Secretary to the Lunacy Commissioners (sec. 157, *post*, and Form of Declaration, Sched. i., *post*), the Clerks of the Lunacy Commissioners (sec. 157, *post*, and Form of Declaration, Sched. i., *post*), Assistants to the Clerk of the Visitors (sec. 179, subs. (2), *post*, and Form of Declaration, Sched. i., *post*), and any person in charge of an alleged lunatic to whom notice of the dismissal of a petition (sec. 7, subs. (1), *post*) or a reception order with accompanying documents (sec. 35, subs. (2), *post*) is sent.

Masters.

No obligation of secrecy is imposed upon the Masters in Lunacy, sec. 111, *post*, and Form of Declaration, Sched. i., *post*.

Chancery Visitors.

The reports of the Chancery Visitors are to be kept secret, and destroyed on the deaths of the patients to whom they relate, sec. 186, *post*.

A petition.—See notes to sec. 6, subs. (1), *sup.*

Presented.—See notes to sec. 6, subs. (1), *sup.*

The alleged lunatic.—Definition of lunatic, sec. 341, *post*. As to right of alleged lunatic to be present, see note to sec. 6, subs. (3), *sup.*

The person appointed.—See note to subs. (3), *sup.*

A solicitor or barrister of course derives no authority from this subsection to make any disclosures without the consent of his client.

Breach of secrecy, how dealt with.

Bound.—A breach of this obligation could possibly be dealt with in the case of parties, their legal advisers, witnesses, or inferior officers of Court, as a contempt.

In the case of a judicial authority, a Commissioner in Lunacy, or Secretary to the Lunacy Commission, it would probably be made the subject of a representation to the authority appointing him.

Secret.—See note to "otherwise having official cognisance," *sup.*

No obligation of secrecy is imposed on the Masters in Lunacy, sec. 111, *post*, and Declaration, Sched. i., *post*.

Sec. 6 (5).

An obligation of secrecy is imposed on the Commissioners, except when removed by "lawful authority," or by their sense of what is necessary for the better execution of their duties (see Declaration, Sched. i., *post*), or by the dismissal of a petition or the release of a lunatic, in so far as they think fit (sec. 7, subs. (3), *inf.*)

An obligation of secrecy is imposed on the judicial authority, except when removed by "lawful authority," as, for instance, under sec. 7, subs. (2), *post.*

An obligation of secrecy is imposed on the Secretary and Clerks to the Lunacy Commissioners, or Assistants to Clerk of Visitors, except when removed by "lawful authority."

Except when . . . lawful authority.—In the declarations made by the Commissioners in Lunacy, the Secretary and Clerks to the Lunacy Commission, and the Assistants to the Clerk of Visitors (see Forms of Declaration, Sched. i., *post*), the words are, "except when required to divulge the same by *legal* authority." These words were taken from 8 & 9 Vict. c. 100, secs. 6, 12, and 22.

Hill v. *Philp.*

In *Hill* v. *Philp*,[1] a case decided under that statute, an order for inspection of documents was held to be legal authority. An order for interrogatories, or for production of documents,[2] would fall within the same category.

The word *lawful* was probably used as being wider than *legal.* Thus it would cover the case of a judicial authority required by the Lunacy Commissioners to inform them as to the circumstances of the making or refusing of a reception order (see sec. 7, subs. (2), *post*), also of the manager of an institution for lunatics, or person in charge of a single patient, required to disclose medical certificates, etc., to a judicial authority under sec. 8, subs. (3), *post;* of the Commissioners required (*a*) by a petitioner to give him a copy of statement by judicial authority of reasons for dismissal of a previous petition (sec. 7, subs. (1), *post*), or (*b*) by a person alleging himself to have been unjustly confined as a lunatic on his release, to furnish him with copies of the documents relating to his confinement (sec. 82, *post*).

Dismissal of petition. (Act of 1889, s. 5, subs. (1).)

7. (1) If the petition is dismissed, the judicial authority shall deliver to the petitioner a statement in writing under his hand of his reasons for dismissing the same, and shall send a copy of such statement to the Commissioners, and shall also, where the alleged lunatic is detained under an urgency order, send notice by post or otherwise to the

[1] 1852, 7 Exch. 232.

[2] According to the practice in lunacy, the Court will order the production of all documents in the custody of the Master or Registrar relating to the estate of a deceased lunatic on the application of a person claiming under him if he make out a *primâ facie* title to the property of the lunatic. *In re Wood* 1863, 4 De J. & S. 134. *In re Smyth,* 1880, 15 Ch.D. 286.

person in whose charge the alleged lunatic is, that the petition has been dismissed. Sec. 7 (1)-(3).

This subsection re-enacts subs. (1) of sec. 5 of the Lunacy Act 1889.

The petition.—See notes to sec. 6, subs. (1), *ante.*

Dismissed.—The petition cannot be dismissed on its original presentation, sec. 6, subs. (1), *ante.*

The judicial authority.—Definition of, sec. 9, subs. (1), *post.*

A statement in writing.—No form is prescribed. This is one of the "documents" covered by the injunction of secrecy above referred to, sec. 6, subs. (5), *ante.*

Reasons for dismissing.—As to matters which the judicial authority is to consider, see note to sec. 6, subs. (1), *ante.*

Commissioners.—Definition of, sec. 341, *post.*

Lunatic.—Definition of lunatic, sec. 341, *post.*

Urgency order.—See notes to sec. 11, *post.*

Notice.—No form is prescribed. The obligation of secrecy above referred to (*ante* p. 96) would attach to this notice.

Post.—As to proof of posting of notices, copies, etc., see note to "notice" in sec. 6, subs. (1), *ante.* As to default, see secs. 320, 329, *post.*

(2) Any judicial authority making or refusing a reception order shall, if so required by the Commissioners, give to them all such information as they may require as to the circumstances under which the order was made or refused. (Communication of information to Commissioners. Act of 1889, s. 5, subs. (2).)

This subsection re-enacts subs. (2) of sec. 5 of the Lunacy Act 1889.

Any judicial authority.—Definition of, sec. 9, subs. (1), *post.*

Making or refusing.—An order may be made on original presentation of petition (sec. 6, subs. (1), *ante*), or on its consideration (sec. 6, subs. (1)), or adjourned consideration (sec. 6, subs. 4, *ante*). It cannot be refused on original presentation (sec. 6, subs. (1), *ante*).

A reception order.—Form of, Form 3, Sched. ii., *post.*

Shall . . . may require.—This is a requisition by "lawful authority" (see sec. 6, subs. (5), *ante*, and notes thereon).

The Commissioners.—Definition of, sec. 341, *post.*

Circumstances.—This would include not only the reasons above mentioned (subs. (1), *sup.*), but the results of any inquiries made by the judicial authority (sec. 6, subs. (4), *ante*). Circumstances.

(3) The Commissioners may communicate such information as they think proper, on the dismissal of the (Communication of information

Sec. 7 (3), (4).

petition or the release of the alleged lunatic, to him or to any person who may satisfy them that he is a proper person to receive the information.

by Commissioners. Act of 1889, s. 5, subs. (3).)

This subsection re-enacts subs. (3) of sec. 5 of the Lunacy Act 1889.

The Commissioners.—Definition of, sec. 341, *post.*

Obligation of secrecy on, sec. 6, subs. (6), *ante.* See notes to "official cognisance," "secret."

May communicate.—In addition to this particular case, the Commissioners in Lunacy may make any disclosures which they feel called upon to make for the better execution of their duties. See Form of Declaration, Sched. i., *post.*

Release.

Release.—A person who considers himself to have been unjustly confined as a lunatic is entitled on his discharge to a copy, free of expense, of the reception order and certificate, or certificates, upon which he was confined, and, if the order was made upon petition, also of the petition and statement of particulars upon which the reception order was made (sec. 82, *post*).

Lunatic.—Definition of, sec. 341, *post.*

Any person who may satisfy them, e.g. the alleged lunatic's legal adviser; also any person against whom the alleged lunatic brought an action for illegal confinement.

(Subsequent petition. Act of 1889, s. 5, subs. (4).)

(4) If after a petition has been dismissed another petition is presented as to the same alleged lunatic, the person presenting such other petition, so far as he has any knowledge or information with regard to the previous petition and its dismissal, shall state the facts relating thereto in his petition, and shall obtain from the Commissioners at his own expense, and present with his petition, a copy of the statement sent to them of the reasons for dismissing the previous petition, and, if he wilfully omits to comply with this subsection, he shall be guilty of a misdemeanour.

This subsection re-enacts subs. (4) of sec. 5 of the Lunacy Act 1889.

A petition has been dismissed.—As to dismissal of a petition, see sec. 7, subs. (1), *ante.*

Presented.—As to presentation of petition, see sec. 6, subs. (1), *ante.*

Sec. 7 (4).

So far as he has any knowledge or information.—See note to "wilfully," *inf.*

Shall state . . . in his petition.—There is no express provision in the form of petition in Sched. ii. (Form 1, *post*) for such a statement. But it may be added after par. 8 in the statutory form (the modification of the form is permissible, sec. 339, *post*), or inserted under par. 4, as to circumstances under which the petition is presented.

Shall obtain from the Commissioners.—This is another of the disclosures which the Commissioners are obliged to make under "lawful authority" (see sec. 6, subs. (5), *ante*, and notes thereon).

At his own expense.—A person alleging himself to have been unjustly confined as a lunatic is entitled on his release to copies of the documents relating to his case free of charge (sec. 82, *post*).

Present with his petition.—The petition must also be supported by a statement of particulars, and two medical certificates on separate sheets of paper, as if it were an original one, see sec. 4, subs. (2), *ante*.

The statement sent to them.—As to which see sec. 7, subs. (1), *ante*.

Wilful omission to comply with subsection, misdemeanour. Gist of offence.

If he wilfully omits to comply . . . misdemeanour.—The gist of the offence is the wilful omission to disclose the fact of the dismissal of the previous petition. Failure to obtain from the Commissioners, and present with his petition, a copy of the statement referred to in the subsection would probably in itself be treated as a mere irregularity.

If a petitioner knows, or has information as to facts which would lead a reasonable man in his position to infer or suspect, that a previous petition had been presented and dismissed, and wilfully avoids inquiry into the matter, it is submitted that he could be convicted under the subsection.

Punishment of misdemeanour where no penalty prescribed.

No penalty is prescribed for offences against this subsection. But every person convicted of a misdemeanour, for which no special punishment is provided by law, is liable to fine and imprisonment without hard labour (both or either), and to be put under recognisances to keep the peace, and to be of good behaviour, at the discretion of the Court.[1]

As to by whom proceedings may be taken, see sec. 325, *post*.

,, recovery of penalties, see sec. 326, *post*.

,, evidence on prosecution, sec. 329, *post*.

Right of lunatic to be examined by judicial authority. (Act of 1889, s. 9, subs. (1).)

8. (1) When a lunatic has been received as a private patient under an order of a judicial authority, without a statement in the order that the patient has been personally seen by such judicial authority, the patient shall have the right to be taken before or visited by a judicial authority, other than the judicial authority who made the order,

[1] Stephen's Dig. Crim. Law, art. 22; 1 Russ. Cri. 66. Cp. *Dunn* v. *Reg.* 1848, 12 Q.B., at p. 1041.

Sec. 8 (1). Form 5.

unless the medical officer of the institution, or, in the case of a single patient, his medical attendant, within twenty-four hours after reception, in a certificate signed and sent to the Commissioners, states that the exercise of such right would be prejudicial to the patient.

This subsection re-enacts subs. (1) of sec. 9 of the Lunacy Act 1889.

Lunatic.—Definition of, sec. 341, *post.*

Has been received, etc.—See sec. 6, subs. (1), *ante.*

Private patient.—Definition of, sec. 341, *post.*

Order.—Definition of reception order, sec. 341, *post*, and see sec. 5, *ante.*

A judicial authority.—Definition of for purposes of this section, see subs. (4), *inf.*

Without a statement in the order.—The fact that a judicial authority making a reception order has or has not personally seen the patient is stated in the order (Form 3, Sched. ii., *post*), and this is a point on which no variation (sec. 339, *post*) from the statutory form ought to be made. But the absence of any statement in the order that the patient had been personally seen by the judicial authority is sufficient under the words above quoted to establish the right of the former to an examination under this subsection.

Patient.—Definition of "private patient," see sec. 341, *post.*

Personally seen.—Sec. 6, subs. (1), *ante.*

The right.—This right, as will be seen below, is a qualified one.

As to procedure in regard to the exercise of this right, see also subss. (2-5), *inf.*

The omission by any manager of an institution for lunatics, etc., to comply with this section is a misdemeanour, subs. (5), *inf.*

Taken before or visited by.—The determination of the mode of interview is left to the judicial authority, see subs. (2), *inf.*

Choice of judicial authority.

A judicial authority.—Definition of, sec. 9, subs. (1), *inf.*

The patient has no right to choose his judicial authority, any more than he has a right to determine whether he shall be taken before or be visited by such authority. All that he has under the statute (and see Forms 6, 7, Sched. ii.) is a right to demand a personal interview with a judicial authority other than the one making the reception order, see sec. 8, subs. (4), "arrangements," etc.

Medical officer.—Definition of, sec. 341.

The institution.—Definition of "institution for lunatics," sec. 341, *post.*

Within twenty-four hours, i.e. must be signed and sent within that time. The notice to a lunatic of his right to demand an interview must be given within twenty-four hours after reception, also if no certificate is granted, subs. (2), *inf.* This might lead to awkward consequences if the manager of an institution were not

informed in time that no certificate was to be given, as any omission, wilful or otherwise, to comply with the section is a misdemeanour, subs. (5), *inf.* Sec. 8 (1), (2).

Wilful misstatement of any material fact in such a certificate is a misdemeanour, sec. 317, subs. (2), *post.*

As to protection of persons signing such certificates, see sec. 330, *post.*

Certificate.—Form of, Form 5, Sched. ii., *post.* As to such forms, see sec. 339, *post.*

Signed and sent.—The certificate must be both signed and despatched to the Commissioners within the twenty-four hours. As to proof of despatch of such certificates by post or otherwise, see sec. 329, subs. (1), *post.*

The Commissioners.—Definition of, sec. 341, *post.*

The exercise of such rights.—See note to "taken before or visited by," *sup.*

(2) Where no such certificate has been signed and sent, the manager of the institution in which the patient is, or the person having charge of him as a single patient, shall, within twenty-four hours after reception, give to the patient a notice in writing of his right under this section, and shall ascertain whether he desires to exercise the right; and if he, within seven days after his reception, expresses his desire to exercise the right, such manager or person shall procure him to sign a notice of such desire, and shall forthwith transmit it by post in a prepaid registered letter to the judicial authority who is to exercise the jurisdiction under this section, or to the justices' clerk of the petty sessional division or borough where the lunatic is, to be by him transmitted to such judicial authority, and the judicial authority shall thereupon arrange, as soon as conveniently may be, either to visit the patient or to have the patient brought before him by the manager or person as the judicial authority may think fit.

(Notice of right to interview. Act of 1889, s. 9, subs. (2).)

Form 6.

Form 7.

This subsection re-enacts subs. (2) of sec. 9 of the Lunacy Act 1889.

No such certificate.—See preceding subsection and note thereon.

Manager.—Definition of, sec. 341, *post.*

The institution.—Definition of, sec. 341, *post.*

Sec. 8 (2).

Patient.—Definition of "private patient," sec. 341, *post.*

Within twenty-four hours.—See note to same words in preceding subsection, *sup.*

Choice of judicial authority.

Notice in writing.—Form of, Form 6, Sched. ii., *post.* As to modification and authority of such forms, see sec. 339, *post.* It will be observed that neither this form nor Form 7 (*post*), in which the patient gives notice of his desire for an interview, leaves to him the choice of the judicial authority, see subs. (1), *sup.* As to the judicial authority by which the jurisdiction under this section is to be exercised, see subs. (4), *inf.* The choice of the mode of interview is left to the judicial authority by the subsection now under consideration. A blank form of notice of desire for a personal interview (Form 7, Sched. ii., *inf.*) should be enclosed in, or accompany the delivery of, this form.

Mode of interview.

His right.—As to what that right is, see preceding note.

Shall ascertain.—These words point to the propriety of some verbal explanations accompanying the notice in writing.

Procure him to sign a notice of such desire.—Form of, Form 7, Sched. ii., *post.* As to modification and authority of such forms, see sec. 339, *post.* This form in blank should be enclosed in, or accompany the delivery of, Form 6.

"Procure."

Procure rather indicates that it is the duty of the manager of the institution, or person in charge of a patient, having once ascertained that the patient wishes to exercise his right to a personal interview, to see that he does so, or at least to keep the matter before him.

Forthwith, i.e. whenever the notice is signed and delivered to him.

Transmit it by post, etc.—As to posting notices, see sec. 329, subs. (1), *post.*

"Judicial authority."

The judicial authority who is to exercise.—See subs. (4), *inf.* It is submitted that for the purposes of this section the judicial authority must still, notwithstanding the Act of 1891 (see *inf.*, words repealed in sec. 9, subs. (1)), have authority, *i.e.* jurisdiction to act in the place where the lunatic is.

Despatching notice to justices' clerk. Fees of justices' clerk.

The justices' clerk.—In the event of any doubts existing as to who the proper judicial authority is, this alternative should be adopted. It is the duty of the justices' clerk to charge and to receive fees for the county or borough fund in respect of his duties under this subsection. This course has been sanctioned by the Commissioners in Lunacy. Almost all tables of fees, it seems, include fees for such matters.[1] It appears, however, that no fee is chargeable in the case of applications for orders made to the justice at his residence or otherwise, in the absence of the clerk.[2]

To be by him transmitted.—Either by post or otherwise, apparently. As to despatch of such documents, see sec. 329, subs. (1), *post;* and note to "notice" in sec. 6, subs. (1), *ante.*

[1] Cp. 54 J.P. 492.

[2] See opinion of Sir John Bridge, endorsed by the Home Secretary, 55 J.P. 827.

Sec. 8 (3.)

The judicial authority.—See subs. (4), *inf.*

Arrange . . . either to visit the patient or to have the patient brought before him.—The judicial authority might, if he thought fit, have the medical certificates and other documents on which the reception order was made sent to him for consideration before determining which of these alternatives to adopt, see subs. (3) *inf.*

A manager of an institution or person in charge of a patient failing, whether wilfully or otherwise, to comply with any duty imposed upon him by this section is guilty of a misdemeanour, subs. (5), *post.*

(3) The judicial authority shall be entitled, if he desires so to do, to see the medical certificates and any other documents, upon the consideration of which the reception order was made, and shall after personally seeing the patient send to the Commissioners a report, and the Commissioners shall take such steps as may be necessary to give effect to the report.

(Judicial authority entitled to see certificates. Act of 1889, s. 9, subs. (3).)

This subsection re-enacts subs. (3) of sec. 9 of the Lunacy Act 1889.

The judicial authority.—As to who is, see subs. (4), *inf.*

Shall be entitled . . . to see.—There is nothing in this subsection to prevent the judicial authority, if he think fit, from obtaining the medical certificates, etc., in order to determine whether to have the patient brought before him or to visit him personally.

This is another case of disclosure under "lawful authority," see sec. 6, subs. (5), *ante.*

The medical certificates.—See sec. 6, subs. (2), *ante.*

Any other documents, e.g. the petition, the statement of particulars, (sec. 4, subs. (2), *ante*), and the results, if in writing, of any further inquiries by the judicial authority making the reception order (sec. 6, subs. (1), *ante*).

The reception order.—Definition of, sec. 341, *post.* See sec. 5, *ante.*

The Commissioners.—Definition of, sec. 341, *post.*

Report to Commissioners.

A report.—As to protection of parties making such reports, see sec. 330, *post.*

As to wilful misstatements in, see sec. 317, subs. (2), *post.*

The report may either confirm the reception order, or recommend its reversal, or advise a special visit by the Commissioners themselves.

Such steps . . . give effect to the report.—The Commissioners give notice to the manager of the institution, or person in charge of the patient, if the reception order is confirmed by the judicial authority, or notice of discharge, if its reversal is recommended.

Sec. 8 (4).

(Jurisdiction and arrangements. Act of 1889, s. 9, subs. (4).)

(4) For the purposes of this section the jurisdiction shall be exercised by any judicial authority having authority to act in the place where the person received is, and not being the judicial authority who made the reception order; and arrangements shall for that purpose from time to time be made amongst themselves by the persons having such authority as aforesaid.

This subsection re-enacts subs. (4) of sec. 9 of the Lunacy Act 1889.

Construction of subsection.

For the purposes of this section.—It is not easy to determine the correct construction of this subsection, in the light of the provisions of (*a*) section 9, subs. (1), *post*, and (*b*) sec. 24 of the Act of 1891, *post*. Under sec. 9, subs. (1), *post*, a judicial authority means (1) a justice of the peace specially appointed under sec. 10, *post*, (2) a County Court judge, or (3) a magistrate *having respectively jurisdiction in the place where the lunatic is*. The words in italics are repealed by the schedule to the Act of 1891 (*post*), and it is provided by sec. 24 of that statute (see *post*) that a justice specially appointed may exercise the powers of the judicial authority under the Act of 1890, whether he has or has not jurisdiction in the place where the lunatic is (subs. (1), *post*), also that any judicial authority may transfer a petition for a reception order presented to him to another judicial authority willing to receive the same, whether the latter has or has not jurisdiction in the place where the lunatic is (subs. (2), *post*). It is submitted that, "for the purposes of this section," the jurisdiction must be exercised by a judicial authority having authority, *i.e.* jurisdiction to act in the place where the patient is received, and that this definition of judicial authority is not altered or expanded by the Act of 1891. This construction is confirmed by the words "having authority to act," and "having such authority as aforesaid," in this subsection, and also by the words in subs. (2), *sup.*, "who is to exercise the jurisdiction under this section."

The jurisdiction.—As to nature of, see subss. (1-3), *sup.*

Having authority.—See note to "for the purposes of," etc., *sup.*

Not being the judicial authority.—Definition of, sec. 9, subs. (1), *post*.

Reception order.—Definition of, sec. 341, *post*, and see sec. 5, *ante*.

"Arrangements" by judicial authorities.

Arrangements . . . for that purpose.—These words confirm the view already expressed (*sup.*), that a lunatic has no choice as to the judicial authority with whom he is to have a personal interview.

The arrangements here indicated are arrangements for securing that no district shall at any time be without one or more judicial authorities "having authority to act" under this section.

Having such authority.—See note to "for the purposes of this section," *sup.*

(5) If any manager of an institution for lunatics, or any person having charge of a single patient, omits to perform any duty imposed upon him by this section, he shall be guilty of a misdemeanour.

Sec. 8 (5).

(Omission of duty a misdemeanour. Act of 1889, s. 9, subs. (5).)

This subsection re-enacts subs. (5) of sec. 9 of the Lunacy Act 1889.

Manager.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Omits.—The omission need not be wilful.

Duty imposed upon him.—These duties are (1) to give the patient notice (in Form 6, Sched. ii., *post*) of his right to an interview with a judicial authority, and ascertain whether he wishes to exercise it, within twenty-four hours after reception; (2) if the patient signifies such desire within seven days after reception, to *procure* him to sign (*v.* note to "procure," *ante*) notice of such desire (in Form 7, Sched. ii., *post*), a copy of which should accompany delivery of Form 6; (3) to transmit such notice forthwith, etc., as provided in subs. (1), *ante*; (4) to take the patient before the judicial authority, or enable the latter to visit him, as the judicial authority may require; (5) to produce the medical certificates and any other documents if so required.

Duties imposed by section.

Single patient.—As to reception of, see sec. 5, *ante.*

Misdemeanour.—As to punishment of, see sec. 7, subs. (4), *ante.* *Semble*, a penalty could also be recovered under sec. 320, *post.*

As to prosecution, see secs. 325, 328, 329, *post.*

The Judicial Authority defined.

9. (1) The powers of the judicial authority under this Act shall be exercised by a justice of the peace specially appointed as hereinafter provided, or a judge of county courts, or magistrate *having respectively jurisdiction in the place where the lunatic is.*

Judicial authority defined. (Act of 1889, s. 2, subs. (1).)

Words in italics repealed by Act of 1891, Schedule, *post.*

This subsection re-enacts subs. (1) of sec. 2 of the Lunacy Act 1889.

The powers.—As to what these are, see secs. 4-8 inclusive, *ante.*

The judicial authority.—As to who is to exercise powers of, in regard to visitation of lunatics received as patients without personal examination by the judicial authority making the reception order, see sec. 8, subs. (4), *ante*, and note thereon.

Under this Act, and under the Lunacy Act 1891, which is to be construed as one with this Act, see *ante*, sec. 1.

Sec. 9 (1)-(3).

Specially appointed.—See sec. 10, *post.*

A judge of county courts may decline jurisdiction, see subs. (3), *inf.*

Magistrate.—Definition of, sec. 341, *post.* May decline jurisdiction. See subs. (3) *inf.*

Having respectively jurisdiction.—These words are repealed by the Schedule to the Act of 1891. As to effect of repeal in case of patient received without personal examination by judicial authority, see note to sec. 8, subs. (4), *ante.*

(Jurisdiction of judicial authority. Act of 1889, s. 4, subs. (3).)

(2) Every judicial authority shall, in the exercise of the jurisdiction conferred by this Act, have the same jurisdiction and power as regards the summoning and examination of witnesses, the administration of oaths, and otherwise, as if he were acting in the exercise of his ordinary jurisdiction, and shall be assisted, if he so requires, by the same officers as if he were so acting, and their assistance under this Act shall be considered in fixing their remuneration.

This subsection re-enacts subs. (3) of sec. 4 of the Lunacy Act 1889.

Judicial authority.—Definition of, subs. (1), *sup.*

The jurisdiction.—As to which see secs. 4-8 inclusive, *ante.*

The same jurisdiction.—The judicial authority has in fact in one way a wider, and in another a narrower, jurisdiction than his ordinary one. On the one hand, he has power to visit the alleged lunatic (sec. 6, subs. (2), *ante*), and make independent inquiries of, or concerning, him (*ib.* subs. (1), *ante*). On the other hand, he has apparently no power to dismiss a petition on its original presentation, sec. 6, subs. (1), *ante.*

And otherwise.—This would include costs.

Assisted by the same officers, e.g. registrars, clerks, etc.

Their assistance . . . remuneration.—*Semble,* expenses not covered by these words will fall on the person presenting the petition.[1]

(County court judge and magistrate. Act of 1889, s. 11.)

(3) A judge of county courts and magistrate shall not be required to exercise any powers under this Act so as to interfere with or delay the exercise of his ordinary jurisdiction.

[1] Cp. Hans. 3rd ser. vol. 347, at p. 1529.

Sec. 10 (1).

This subsection re-enacts sec. 11 of the Lunacy Act 1889.

Section 338, subs. (4), *post*, empowered the Lord Chancellor (in the case of county court judges) and the Home Secretary (in the case of magistrates, as to definition of which term see sec. 341, *post*), to make rules for carrying out the object of this subsection. See these Rules and Certificates, *post*, Appx.

Appointment of justices to make reception orders. (Act of 1889, s. 10, subs. (1).) Repealed by Act of 1891, Schedule.

10. (1) The justices of every county and quarter sessions borough shall annually appoint out of their own body as many fit and proper persons as they may deem necessary to exercise, *within the county and borough respectively*, the powers conferred by this Act upon the judicial authority. In making such appointments the justices of every county shall have regard to the convenience of the inhabitants of each petty sessional division thereof.

This subsection re-enacts subs. (1) of sec. 10 of the Lunacy Act 1889.

The justices.—Definition of, sec. 341, *post*.

County.—Definition of, sec. 341, *post*.

Application of section to quarter sessions boroughs.

Quarter sessions borough.—The section applies to every quarter sessions borough, without regard to its population. As to case of borough or place with separate quarter sessions, see subs. (4), *post*.

Annually, viz. in the case of a county at Michaelmas quarter sessions; and in the case of a borough at special sessions in October, subs. (2), *inf*.

Appoint.—The form of appointment may follow the words of the subsection, viz. "to exercise the powers conferred by the Lunacy Acts 1890 and 1891 upon the judicial authority," see Form, *post*, Appx.

As to duration of appointments, see subss. (2) and (3), *inf*.

Whole body of justices may be appointed.

Out of their own body.—Such an appointment, whether made before or after the passing of the Act of 1891 (viz. 5th August 1891) is not invalid only because it includes all the justices of the county or borough (Act of 1891, sec. 24, subs. (4), *inf*.).

Scale of appointment.

As many fit, etc.—The appointment should be made on a scale sufficiently large to prevent difficulties arising as to getting a justice to act.

Within the county, etc.—Repealed by Act of 1891, Sched. *post*; see note to sec. 8, subs. (4), *sup*.

The powers conferred, etc.—As to these see secs. 4-8 inclusive, *ante*. There is nothing in this subsection which affects the powers and duties of the justices generally as regards pauper lunatics and lunatics wandering at large, secs. 14-21, *post*.

Sec. 10 (2), (3).

This Act, or by the Act of 1891 (see sec. 1, *ante*), *e.g.* power to transfer petition to other judicial authority willing to receive it, sec. 24, subs. (2), *post*.

The judicial authority.—Definition of, sec. 9, subs. (1), *ante*.

The convenience of the inhabitants.—The justices will consider, that is to say, the population of each petty sessional division not only in the gross number of appointments made, but in their distribution.

(Appointments when made. Act of 1889, s. 10, subs. (1).)

(2) The annual appointments under this section shall be made by justices of a county at their Michaelmas quarter sessions, and by justices of a borough at special sessions to be held in the month of October.

This subsection is based on sec. 10, subs. (1) of the Lunacy Act 1889.

The annual appointments.—See subs. (1). As to appointments by Lord Chancellor, see subs. (3), *inf*.

County.—Definition of, sec. 341, *post*.

Duration of appointments.

The appointments expire at the Michaelmas quarter sessions and October special sessions respectively, if, but only if, fresh appointments are then made. See sec. 24, subs. (5) of the Act of 1890, *post*, and notes to subs. (3), *inf*., as to duration of appointments by Lord Chancellor.

(Appointments by Lord Chancellor. Act of 1889, s. 10, subs. (2).)

(3) If in any year such appointments are not made, it shall be lawful for the Lord Chancellor, by writing under his hand, to make the same; and if, on any representation made to him that the number of justices so appointed for any county or borough is at any time insufficient, the Lord Chancellor is satisfied that such representation is well founded, he shall have power to appoint, by writing under his hand, any other justices of such county or borough to act until the next Michaelmas quarter or special sessions, with the justices so appointed.

This subsection re-enacts subs. (2) of sec. 10 of the Lunacy Act 1889.

See notes to subs. (1) and (2), *sup*.

The Lord Chancellor, *i.e.* the Lord High Chancellor of Great Britain & Ireland, see Interpretation Act 1889 (52 and 53 Vict. c. 63), sec. 12.

Sec. 10 (3), (4).

The Lord Chancellor may confer powers of justice on member of board of guardians, sec. 25, Act 1891, *post*.

Make the same.—The justices so appointed act till other justices are specially appointed under subs. (2), *sup.* In the event of such appointment not being made, their authority would still continue. See sec. 24, subs. (5) of the Act of 1891, *post*, and note to subs. (2), *sup.*, as to duration of appointment of justices, and *inf.*, subs. (4), as to supplementary justices.

Duration of appointments.

To act until.—The authority of these justices expired, under the Act of 1890, at the periods mentioned in the subsection, whether the insufficiency was remedied then by the justices or not. In the latter case a fresh representation to the Lord Chancellor was necessary. But see notes to "make the same," *sup.*, and to subs. (2), *sup.* A fresh representation is not necessary under subs. (4), *inf.*

Duration of appointments of supplementary justices.

(4) If in the case of a borough or place not having a separate quarter sessions, representation is made to the Lord Chancellor that public inconvenience is likely to result, unless power is given to the justices of such borough or place to exercise *within the same* the powers conferred by this Act upon the judicial authority, it shall be lawful for the Lord Chancellor, from time to time, with or without a fresh representation, to appoint, by writing under his hand, one or more of the justices of such borough or place to exercise *within the same* during such time as the Lord Chancellor thinks fit the powers aforesaid, together with any other specially appointed justices acting therein.

(Borough without separate quarter sessions. Act of 1889, s. 10, subs. (3).)

Repealed by Act of 1891, Schedule.

Repealed by Act of 1891, Schedule.

This subsection re-enacts subs. (3) of sec. 10 of the Lunacy Act 1889. The words in italics are repealed by the Schedule to the Act of 1891.

Borough . . . sessions.—The case of counties and quarter sessions boroughs is dealt with in subss. (1) and (3), *sup.*

Lord Chancellor.—See definition of, cited in note to subs. (3), *sup.*

Justices.—Definition of, see sec. 341, *post.*

The powers conferred.—See secs. 4-8, *ante.*

The judicial authority.—See definition of, sec. 9, subs. (1), *ante.*

With or without a fresh representation.—See note "to act until" in subs. (3), *sup.*

Specially appointed justices.—See subs. (1) as to, *sup.*

24. (1) **A justice of the peace specially appointed under section 10 of the principal Act may exercise the powers of the**

Act of 1891, s. 24.

Sec. 10 (4).

Amendment as to judicial authority under 53 & 54 Vict. c. 5.

judicial authority under that Act, notwithstanding that he may not have jurisdiction in the place where the lunatic or alleged lunatic is.

Justice.—Definition of, sec. 341, *post.*

Specially appointed.—As to appointment of, see *ante.*

Exercise the powers.—As to these, see secs. 4, 8, 13-22.

The judicial authority.—As to definition of, see sec. 9, subs. (1), *ante.*

May not have jurisdiction.—This subsection was intended to obviate practical difficulties which arose under the Act of 1890, where a judicial authority was not always easily found, or if found, willing to act.

Lunatic.—Definition of, sec. 341, *post.*

(Transfer of petition).

(2) A judicial authority may, if he considers it expedient, transfer a petition for a reception order presented to him to any other judicial authority who is willing to receive the same, whether such other judicial authority has or has not jurisdiction in the place where the lunatic is, and such other judicial authority shall have the same powers as the judicial authority to whom the petition was presented would have had.

See notes to subs. (1), *sup.*

Transfer.—As to the power of county court judges and stipendiary magistrates to decline to act, see sec. 9, subs. (3), *ante*, and Rules, *post*, Appx.

Petition.—See secs. 4 and 5, *ante.*

Reception order.—*Ib.*, and definition of, sec. 341, *post.*

(Reception order not invalidated by flaw in appointment.)

(3) A reception order made after the passing of this Act shall not be invalid on the ground only that the justice of the peace who signed the order shall appear to have not been duly appointed under section 10 of the principal Act, if the order is within fourteen days after its date approved and signed by a judicial authority.

See notes to previous subsections.

The passing of this Act, i.e. 5th August 1891.

Not duly appointed.—Several orders had been made by justices not duly appointed.

"Fourteen days."

Within fourteen days after its date.—"Days" means days in all, Sundays, etc., included. The day of the date is excluded.[1]

[1] Cp. *Williams* v. *Burgess*, 1840, 10 L.J. Q.B. 10.

Sec. 10 (4).

Act of 1891, s. 24, subs. (4). Appointment of whole body of justices.

(4) The appointment at any time before or after the passing of this Act by the justices of a county or quarter sessions borough of justices to exercise the powers of the judicial authority under the principal Act shall not be invalid on the ground only that the appointment includes all the justices of the county or borough.

See notes to subss. (1) and (2), *sup.*

County.—Definition of, sec. 341, *post.*

Quarter sessions borough.—*Ib.*

All the justices.—Several of such appointments had been made, and doubts arose as to their validity.

Act of 1891, s. 24, subs. (5). Appointments under Act of 1889.

(5) Every justice appointed under section 10 of the Lunacy Acts Amendment Act 1889 shall be deemed to have had power to exercise the jurisdiction conferred upon the judicial authority under the principal Act, and the jurisdiction of such justices and of any justices appointed or hereafter to be appointed under the principal Act shall be deemed to have continued and shall continue until a fresh appointment is made.

See notes to subss. (1)-(4), *sup.*

Every justice.—Doubts had arisen, notwithstanding the wide and probably sufficient range of sec. 342, *post*, whether in view of the words in sec. 4, subs. (1), *ante*, "shall not be received," etc., the orders made by justices appointed under the Act of 1889 were valid. This subsection settles the difficulty. It also continues the jurisdiction of justices appointed under sec. 10, on default in making fresh appointments.

Shall be deemed.—These words here mean shall be taken conclusively, assuming of course that the original appointment was regular.

Act of 1891, s. 25. Power to confer powers of justice of the peace on member of board of guardians.

25. If for the due administration of the Lunacy Acts 1890 and 1891, in any union it appears to the Lord Chancellor desirable, he may by writing under his hand empower the chairman of the board of guardians to sign orders for the reception of persons as pauper lunatics in institutions for lunatics, and every order so signed shall have effect as if made by a justice of the peace under the principal Act.

Union.—Definition of, sec. 341, *post.*

Lord Chancellor.—See definition of, cited *ante* p. 110.

Guardians.—See definition of, sec. 341, *post.*

Pauper lunatics.—See definitions of, sec. 341, *post.*

Institution for lunatics.—See definition of, sec. 341, *post.* "Insti-

Sec. 10 (5), (6).

tution for lunatics" does not include "workhouse." An order cannot be made therefore, in virtue of this section, for the continued detention of a pauper lunatic in a workhouse under sec. 24, subs. (3) of the Act of 1890, *post*.

(Appointments in case of inability, etc. Act of 1889, s. 10, subs. (4).)

(5) In the case of the death, absence, inability, or refusal to act of any justice appointed under this section, the justices of the county or borough, or the Lord Chancellor, as the case may be, may appoint a justice to act in his place. Such appointment may be made by justices of a county at any quarter sessions, and by justices of a borough at special sessions to be held at the same time as any quarter sessions.

This subsection re-enacts in its first sentence subs. (4) of sec. 10 of the Lunacy Act 1889.

See notes to subss. (1)-(4), *ante*.

Such appointment, etc.—This provision is new.

(Publication of appointments. Act of 1889, s. 10, subs. (5).)

(6) All appointments of justices under this section shall be recorded by the clerk of the peace of the county or borough, or in the case of a borough or place not having a separate quarter sessions, by the clerk to the justices, and it shall be the duty of every such clerk to publish the names of the justices so appointed in each petty sessional division of the county and otherwise for the information of all persons interested. In the case of quarter sessions boroughs, the clerk to the justices making the appointment shall forthwith notify the same to the clerk of the peace of the borough.

This subsection re-enacts subs. (5) of sec. 10 of the Lunacy Act 1889.

Such clerk, i.e. the clerk of the peace or, if the borough has no separate quarter sessions, the clerk to the justices.

Urgency Orders.

Urgency orders. (Act of 1889, s. 8, subs. (1).)

11. (1) In cases of urgency where it is expedient, either for the welfare of a person (not a pauper) alleged to be a lunatic, or for the public safety, that the alleged lunatic

should be forthwith placed under care and treatment, he may be received and detained in an institution for lunatics, or as a single patient upon an urgency order, made (if possible) by the husband or wife or by a relative of the alleged lunatic, accompanied by one medical certificate. **Sec. 11 (1).** Forms 4, 8, 9.

This subsection re-enacts subs. (1) of sec. 8 of the Lunacy Act 1889.

Origin of section.

In cases of urgency.—This section carries into effect a recommendation of the Dillwyn Committee of 1877 (see notes to sec. 1), *ante*. Under the Lunacy Act 1853, 16 & 17 Vict. c. 96, sec. 5, a patient might be received into "a licensed house or hospital" on the certificate of one medical practitioner. See also 33rd Report of Lunacy Commissioners, at p. 135. The present section extends to institutions for lunatics, a term which includes (see sec. 341, *post*) asylums as well as licensed houses and hospitals. As to emergency certificate in Scotland and corresponding provision in Ireland, see notes to sec. 2 *ante*.

"Urgency."

There is "urgency" within the meaning of the section only where instant intervention is "expedient, either for the welfare of the alleged lunatic, or for the public safety."

The procedure is not to be resorted to in cases not falling under one or other of these categories; see the judgment *in re Cathcart*,[1] where recourse was had to it because there were no other means of getting evidence to support a petition for an inquisition.

Removal of pauper in urgent cases.

Not a pauper.—Definition of pauper, sec. 341, *post*. A pauper lunatic may, in urgent cases, be removed to a workhouse by a constable, relieving officer, or overseer (sec. 20, *post*), or by order of a justice (see sec. 21, *post*).

Lunatic.—Definition of, sec. 341, *post*.

Received.—The urgency order is a sufficient authority for the reception and detention, if accompanied by the prescribed medical certificate (subs. (1) *sup.*, and sec. 29, subs. (3), *post*), and a statement of particulars (subs. (7), *post*).

And detained.—For seven days, or if a petition for a reception order is pending, then till it is disposed of (subs. (6), *post*). Apart from any statutory authority, the detention of a lunatic is justifiable if necessary for his protection or that of others (see *ante* p. 86).

Institution for lunatics.—Definition of, sec. 341, *post*, and note "in cases of urgency," *sup.*

Single patients.—As to reception of, see sec. 5, *ante*.

Urgency order.—Form of, Form 4, Sched. ii., *post*. "Reception order" includes "urgency order" (see sec. 341, *post*). As to use of forms, sec. 339, *post*.

Wilful misstatement of material fact is a misdemeanour (sec. 317, subs. (1), *post*).

[1] 1893, 1 Ch. 475. The fact that a person entertains, and is about to give practical effect to, free love views in regard to marriage, is not *per se* evidence of insanity and will not justify an urgency order.—*Miss Lanchester's case*, 1895.

Sec. 11 (1)-(3).

Order, by whom to be made.

Made (if possible), etc.—Just as the petition for a reception order is, if possible, to be presented by the husband or wife or a relation of the alleged lunatic, sec. 5, subs. (1), *ante*. Everything, however, yields to the urgency. If not related to the patient, the person signing the order must state the reason why the order is not signed by a relation, his or her connection with the patient, and the circumstances under which he or she signs, subs. (3), *inf*. As to protection of persons signing such orders, see sec. 330, *post*.

Relative.—Definition of, sec. 341, *post*. See "relation" in sec. 22, *post*, and note thereon.

Accompanied by.—The order may be signed before or after the certificate. The order must also be accompanied by a statement of particulars, see subs. (7), *inf*., and Form 2, Sched. ii., *post*.

(Signing of urgency order. Act of 1889, s. 8, subs. (3).)

(2) An urgency order may be signed before or after the medical certificate.

This subsection re-enacts subs. (3) of sec. 8 of the Lunacy Act 1889.

See notes to preceding subsection. An urgency order may be made as well before as after petition for reception order has been presented, subs. (5), *inf*.

Medical certificates.

Medical certificate.—See note to sec. 6, subs. (1), *ante*. Form of, Forms 8 and 9, Sched. ii., *post*; also sec. 28, *post*. The medical certificate must contain a statement signed by the person signing the certificate that it is expedient for the alleged lunatic to be placed under care and treatment forthwith, sec. 28, subs. (3), *post*, and Form 9, Sched. ii., *post*. This is in addition to the statement of particulars signed by the person making the reception order, subs. (7), *post*. It must appear by the medical certificate that the certifying practitioner has personally examined the alleged lunatic not more than two clear days before his reception, otherwise the lunatic is not to be received, sec. 29, subs. (3), *post*.

Wilful misstatement of material fact in a certificate, etc., is a misdemeanour, sec. 317, subs. (2), *post*.

As to protection of persons signing certificates, see sec. 330, *post*.

(Statement of reasons, etc. Act of 1889, s. 8, subs. (4).)

(3) If an urgency order is not signed by the husband or wife or by a relative of the alleged lunatic, the order shall contain a statement of the reasons why the same is not so signed and of the connection with the alleged lunatic of the person signing the order, and the circumstances under which he signs the same.

This subsection re-enacts subs. (4) of sec. 8 of the Lunacy Act 1889.

Sec. 11 (3)-(5).

If an urgency order, etc.—See notes to sec. 5, subs. (1), *ante*, and subs. (1), *ante*, "made (if possible)."

Relative.—Definition of, sec. 341, *post*.

Lunatic.—Definition of, sec. 341, *post*.

The order shall contain.—See Form 4, Sched. ii., *post*. As to use of forms, sec. 339, *post*.

A statement, etc. . . . signs the same.—Form 4, Sched. ii., *post*. See note to corresponding words in sec. 5, subs. (1), *ante*.

Wilful misstatement of material fact in any such document is a misdemeanour, sec. 317, subs. (1), *post*.

As to protection of persons putting the Act in force, see sec. 330, *post*.

(Who may not sign. Act of 1889, s. 8, subs. (5).)

(4) No person shall sign an urgency order unless he is at least twenty-one years of age and has within two days before the date of the order personally seen the alleged lunatic.

This subsection re-enacts subs. (5) of sec. 8 of the Lunacy Act 1889.

At least twenty-one years of age.—See sec. 5, subs. (2), *ante*.

Meaning of "days."

Has within two days.—"Days" means days in all, Sunday, etc., included. It will be sufficient if the person signing the order has seen the alleged lunatic on the first of the two days before the date of the order. In the case of a petition for a reception order, the period is fourteen days, sec. 5, subs. (2), *ante*. The practitioner signing the medical certificate must have examined the alleged lunatic not more than two clear days before his reception, sec. 29, subs. (3), *post*.

As to distinction between days and clear days, see *Liffen* v. *Pitcher*.[1]

Date of order.

The date of the order, i.e. the day of the date.[2]—The order may be signed before or after (*a*) the medical certificate, subs. (2), *sup.* p. 116, or (*b*) the presentation of a petition for a reception order, subs. (5), *inf.*

Lunatic.—Definition of, sec. 341, *post*.

(Urgency orders, when may be made. Act of 1889, s. 8, subs. (6).)

(5) An urgency order may be made as well after as before a petition for a reception order has been presented. An urgency order, if made before a petition has been presented, shall be referred to in the petition, and if made after the petition has been presented, a copy thereof shall forthwith be sent by the petitioner to the judicial authority to whom the petition has been presented.

[1] 1842, 1 Dowl., N.S., 767.
[2] *Pugh* v. *Duke of Leeds*, 1777, 2 Cowp. 714, 720.

Sec. 11 (5)-(7).

This subsection re-enacts subs. (6) of sec. 8 of the Lunacy Act 1889.

Urgency order.—See notes to subs. (1), *sup.*

As well after as before.—An urgency order may be signed before or after the medical certificate, subs. (2), *sup.*

A petition for a reception order.—See notes to sec. 5, *ante.*

Shall be referred to.—See form of petition, Form 1, Sched. ii., par. 8, *post.*

If made after this petition.—There is no provision either in the Act or in the Second Schedule (see Forms 2 and 4, *post*) for any mention of the previous petition in the statement of particulars or urgency order.

The judicial authority.—See notes to secs. 6 and 9, *ante.*

(Duration of urgency order. Act of 1889, s. 8, subs. (7).)

(6) An urgency order shall remain in force for seven days from its date; or if a petition for a reception order is pending, then until the petition is finally disposed of.

This subsection re-enacts subs. (7) of sec. 8 of the Lunacy Act 1889.

Urgency order.—See notes to subs. (1), *sup.*

"Seven days." Date of order.

Seven days, i.e. days in all, Sundays, etc., included.

Its date, i.e. from the day of its date, see note to subs. (4), *sup.* The day of the date is excluded from the computation.[1] As to when order may be dated, see note to subs. (4), *sup.*

A petition . . . is pending.—See subs. (5), *sup.*

Finally disposed of.—For this purpose the petition ought, it is submitted, to be held to be finally disposed of when the reception order is made (see sec. 6, *ante*), or in the case of dismissal, on the receipt by the person in charge of the alleged lunatic of a notice of the fact from the judicial authority (see sec. 7, subs. (1), *ante*). If the order were held to expire either on the dismissal of the petition or on the posting or sending of the notice above referred to, the person in charge of the alleged lunatic would be liable to an action for false imprisonment at the instance of his patient. There would of course be a defence to such an action under sec. 330, *post*, but the person in charge of an alleged lunatic ought not under such circumstances to be put to the expense and trouble of having to defend legal proceedings instituted against him at all.

(Statement of particulars. Act of 1889, s. 8, subs. (9).) Form 2.

(7) An urgency order shall have subjoined or annexed thereto a statement of particulars.

This subsection re-enacts subs. (9) of sec. 8 of the Lunacy Act 1889.

[1] Cp. *re Railway Sleepers Co.*, 1885, 29 Ch.D., at p. 206.

Urgency order.—See notes to subs. (1), *ante.*

Subjoined or annexed.—See Form 4, Sched. ii., *post.* As to use of forms, sec. 339, *post.*

A statement of particulars.—Form 2, Sched. ii., *post.* As to use of forms, sec. 339, *post.* See note to corresponding words in sec. 5, subs. (1), *ante.* This statement is distinct from the statement of reasons in the medical certificate accompanying an urgency order, Form 9, Sched. ii., *post*, and note to subs. (1), *ante.*

Reception after Inquisition.

Lunatics so found by inquisition. (Act of 1889, s. 18.)

12. A lunatic so found by inquisition may be received in an institution for lunatics or as a single patient upon an order signed by the committee of the person of the lunatic, and having annexed thereto an office copy of the order appointing the committee, or if no such committee has been appointed, upon an order signed by a Master.

This subsection re-enacts sec. 18 of the Lunacy Act 1889.

A lunatic.—Definition of, sec. 341, *post.*

Inquisition.—Definition of, sec. 341, *post.* And see as to former and modern procedure, secs. 90 and 108, subs. (1), *post.*

May be received.—The case of a lunatic so found is expressly excepted from sec. 4, subs. (1), *ante.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Single patient.—As to reception of, see sec. 4, *ante.*

An order signed by the committee of the person . . . or . . . by a Master.—See forms, *post*, Appx. The order may of course be recalled at any time. No provision therefore for the release of Chancery lunatics on trial is necessary.

Committee of the person.—See notes to sec. 108 subs. (2) *post.*

The order appointing the committee.—See notes to sec. 108, subs. (2), *post.*

A Master, i.e. a Master in Lunacy, sec. 341, *post.*

For origin of office of Master in Lunacy, see notes to sec. 108, *post.*

As to appointment and duties of, see sec. 111 *et seq.*, *post.*

Summary Reception Orders.

Lunatics not under proper care and control or cruelly treated or neglected.

13. (1) Every constable, relieving officer, and overseer of a parish, who has knowledge that any person within the district or parish of the constable, relieving officer, or overseer, who is not a pauper and not wandering at large,

Sec. 13 (1). (Act of 1889, s. 13, subs. (1).)

is deemed to be a lunatic and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, shall within three days after obtaining such knowledge give information thereof upon oath to a justice being a judicial authority under this Act.

Act of 1891, s. 2, subs. (2). (Union with two or more relieving officers.)

2. (2) Where in a union there are two or more relieving officers, and the guardians, with the sanction of the Local Government Board, direct one relieving officer to discharge throughout the union the duties of a relieving officer in respect of lunatics, every other relieving officer in the union shall inform the officer so directed of any case of a lunatic, with which it would otherwise devolve upon such other relieving officer to deal, and it shall be the duty of the relieving officer receiving such information to deal with the case, and the other relieving officer shall be discharged from any further duty in the matter.

This subsection re-enacts subs. (1) of sec. 13 of the Act of 1889.

Summary reception orders, i.e. orders for the reception of lunatics otherwise than upon petition, sec. 19, subs. (1), *post.*

Similar information.

Every constable, relieving officer, and overseer.—The duty is imposed upon constables, relieving officers, and overseers equally and independently. *Aliter* under sec. 14, *post*, where the initiative rests with the relieving officer, sec. 2, subs. (2), of the Act of 1891 has expanded the meaning of relieving officer. Any other person having such knowledge has a right at any time to lay a similar information before a justice qualified (as to which see note to judicial authority, *inf.*) to act under this section. This is clear not only from the fact that the present subsection merely imposes a duty on the persons above mentioned, but also from the words "on oath of any person whomsoever," in subs. (2), *inf.*

As to penalty for non-compliance with the Act, see sec. 320, *post.*

Not a pauper and not wandering at large.—The case of "pauper lunatics" is dealt with in sec. 14, *post.* For definition of "pauper," see sec. 341, *post.*

"Wandering at large."

"Wandering at large" means wandering aimlessly, and possibly implies the absence of *any* care or control as distinguished from the absence of proper care and control (*v. inf.*)

Duty of relieving officer where lunatic can only be maintained in asylum out of rates.

The case of lunatics (whether pauper or not) wandering at large is dealt with in sec. 15, *post.*

Definition of "lunatic," sec. 341, *post.*

It is the duty of the relieving officer to move under this section, even if he knows that although the lunatic is not a pauper, the expense of sending him to an asylum and of his maintenance there will probably fall upon the rates.

Sec. 13 (1), (2).

"Deemed to be."

Is deemed to be, i.e. is generally regarded as being. The word "deemed" is here used in a different sense from either of the two interpretations which it usually bears, viz. taken conclusively or taken *primâ facie*. See note to sec. 18, *post*. The informant is not required to state that the person is a lunatic or to support his information by medical or other evidence. All that he need pledge himself to is common report. The duty of investigating its accuracy is imposed upon the justice, see subs. (2), *inf*.

See notes to corresponding words in sec. 14, subs. (1), and sec. 15, subs. (1), *post*.

Lunatic.—Definition of, sec. 341, *post*.

"Not under proper control" or "cruelly treated."

And is not under proper care . . . or is cruelly treated.—As to distinction between "not under proper care" and "wandering at large," *v. sup*.

On these points common report will not suffice. The informant must have knowledge.

A wilful misstatement of a material fact in such an information is not a misdemeanour within sec. 317, *post*; it could, however, probably be punished as perjury.

As to protection of persons laying such information, see sec. 330, *post*.

Relative.—Definition of, sec. 341, *post*.

Person having the care or charge.—As to punishment of such person, see sec. 322, *post*.

Information . . . upon oath.—See Form of, *post*, Appx.

Judicial authority.

A justice being a judicial authority, etc, i.e. specially appointed under sec. 10, *ante*. No other qualification is necessary for this purpose. See note to "within the limits," etc., in subs. (2), *inf*.

Definition of "justice," sec. 341, *post*.

As to temporary removal of lunatic to workhouse in urgent cases, see sec. 20, *post*.

Union.—Definition of, sec. 341, *post*.

Guardians.—Definition of, sec. 341, *post*.

Lunatics.—Definition of, sec. 341, *post*.

Any case . . . with which.—See also secs. 14, subs. (2), and 15, subs. (1), *post*.

Discharged, i.e. on giving notice.

(Visitation, etc., by justice.) Act of 1889, s. 13, subs. (2).) Repealed by Act of 1891, Schedule.

(2) Any such justice upon the information on oath of any person whomsoever, that a person *within the limits of his jurisdiction*, not a pauper and not wandering at large, is deemed to be a lunatic and is not under proper care and control, or is cruelly treated or neglected as aforesaid, may himself visit the alleged lunatic, and shall, whether making such visit or not, direct and authorise any two medical

Sec. 13 (2).

practitioners whom he thinks fit to visit and examine the alleged lunatic and to certify their opinion as to his mental state, and the justice shall proceed in the same manner so far as possible, and have as to the alleged lunatic the same powers, as if a petition for a reception order had been presented by the person by whom the information with regard to the alleged lunatic has been sworn.

This subsection re-enacts subs. (2) of sec. 13 of the Lunacy Act 1889.

Any such justice, i.e. specially appointed under sec. 10, *ante*, and see subs. (1), *sup.*

Information on oath.—See Form, *post*, Appx.

Any person whomsoever.—See note to "every constable," etc., in preceding subsection.

Qualification of justice.

Within the limits.—These words are repealed by the Act of 1891, Sched., *post*, Appx. The only qualification necessary for this purpose is that the justice should be specially appointed under sec. 10, *ante*. A justice examining an alleged lunatic under sec. 8, subs. (1), *ante*, must still, however, have authority to act in the place where the alleged lunatic is. See subs. (4) of that section, *ante*.

Not a pauper . . . at large.—See note in preceding subsection, *sup.*

Is deemed to be.—See note in preceding subsection, *sup.*, and also sec. 14, subs. (1), *post*, and sec. 15, subs. (1), *post*.

Lunatic.—Definition of, sec. 341, *post*.

And is not under proper care . . . as aforesaid.—See note in preceding subsection, *sup.*

Visitation by justice.

May himself visit.—This visit may be made with or without notice. The justice may go to see the alleged lunatic in order either to satisfy himself as to his treatment, or to form an opinion as to his state of mind. He cannot, however, act on his own opinion upon the latter point. See next note. As regards the former, he may accept the informant's evidence without further inquiry, or test it by a visit to the alleged lunatic, or by such further and other inquiries as he thinks fit, and is to proceed, as far as possible, and have the same powers as if an ordinary petition had been presented, *inf.*

Appointment of medical practitioner.

And shall, etc.—The duty of investigating the truth of the common report as to the party's lunacy is cast upon the justice. He has no alternative but to appoint medical practitioners to examine the alleged lunatic and certify as to his state of mind. In regard to the other matters in the information he has a freer hand. See preceding note.

Authorisation of medical practitioners.

Authorise.—This word gives the medical practitioners their authority to act, and brings them within sec. 330, *post*, which protects persons putting the Act in force.

The reception order both contains (see Forms 3 and 4, Sched. ii.,

Sec. 13 (2).

post) and is itself an authority to the person directed to convey a lunatic to an institution, and also to the person required to receive and detain him there (sec. 35, subs. (1), *post*), and therefore it is perhaps that in regard to these persons the word "authorise" is not inserted in the statute.

Not necessary that one practitioner be usual medical attendant.

Any two medical practitioners.—Definition of medical practitioner, sec. 341, *post*. It is not necessary that one of the practitioners should be the usual medical attendant, if any, of the alleged lunatic, as in the case of private patients, where a petition for a reception order is presented, see sec. 31, *post*. Sec. 13 deals with the case of non-pauper lunatics, where the procedure indicated in the section, viz. information to a justice by a relieving officer, is adopted. As to remuneration of medical practitioners, see sec. 285, *post*.

Visitation by medical practitioner.

To visit and examine.—The examinations must, though the visits need not, be made separately, not more than seven clear days before the date of the order, sec. 29, subss. (1) and (2), *post*.

Form of certificate.

And to certify.—Separate certificates must be signed, see subs. (3), *post*, "if upon the certificates," etc., and see also par. 2 in Form 8, Sched. ii., *post*.

It is apparently not necessary that the certificate should be made upon Form 8, Sched. ii., *post*, but that form may be used with modifications, see sec. 329, *post*.

Wilful misstatement of material fact in, is misdemeanour, sec. 317, subs. (2), *post*.

As to protection of persons signing, sec. 330, *post*.

Certificates by medical practitioners.

Their opinion as to his mental state.—The medical practitioners must also state that in their opinion the lunatic is a proper person to be taken charge of and detained under care (see Form 8, Sched. ii., *post*), and the justice has to be satisfied of this before making a summary reception order, see subs. (3), *post*. There is nothing to prevent the justice from making any inquiries which he may think proper from the medical practitioners, or from summoning or examining them as witnesses as to any opinion they may have formed as to the care and treatment, etc., of the alleged lunatic. Under subs. (3), *post*, he has power to make "such other and further inquiry" as he may think necessary, and the present subsection directs and enables him to proceed in the same manner as a judicial authority dealing with a petition for an ordinary reception order.

Power of justice in relation to medical practitioners.

It is conceived that the medical practitioners may, if they think proper, certify that the lunatic is not in a fit state to be removed to an institution, in which case the justice may, and should, suspend the execution of the order, see sec. 19, subs. (1) *post*.

The justice.—See note to "a justice," subs. (1), *ante*.

Procedure before justices.

Shall proceed . . . so far as possible . . . sworn.—The procedure on petitions for reception orders (as to which see secs. 6 and 7, *ante* and notes thereon) is to be followed *mutatis mutandis*. On the laying of the information—which corresponds to the presentation of the petition, but is unaccompanied by medical certificates or other

Sec. 13 (2), (3).

evidence (see note to "every constable," etc., in sec. 13, subs. (1), *ante*)—the justice may either visit the alleged lunatic or not, as he thinks fit, and whether doing this or not, and, in the former case, either before or after doing it, he will direct the prescribed medical examinations. On the consideration of the certificates and such other or further evidence (if any) as he thinks necessary he may make the summary reception order, or dismiss the information, or adjourn the case, as he deems proper. The proceedings should be held in private; the same obligation of secrecy which is imposed upon parties on the consideration of a petition for a reception order exists. The limits of time prescribed by secs. 6 and 7, *ante*, in regard to adjournments of the consideration of a petition, are to be observed, etc.

"Have as to the alleged lunatic," etc.

The words "have as to the alleged lunatic the same powers" are ambiguous. One construction of them might be that while the procedure on petitions for reception orders was to be followed, those powers only of "the judicial authority," which related to the alleged lunatic were conferred on the justice. Thus he could visit the alleged lunatic or not, make an order for his reception forthwith on receiving the medical certificates, without personal visitation, or any independent inquiry, but not (see sec. 9, subs. (2), *ante*) summon witnesses or administer oaths. It is submitted that this construction would be erroneous, and that the true meaning of the words in question in their relation to the clause under consideration is as follows: *Mutatis mutandis*, the procedure indicated in secs. 6 and 7 (*ante*) is to be adopted. In particular, the special powers above noted, which are conferred on the judicial authority by these sections, are to be enjoyed by the justice. But the justice is also a "judicial authority" (see sec. 9, subs. (1), *ante*), and he therefore enjoys (subs. (2), *ante*) when acting as such the powers as to summoning witnesses, administering oaths, and otherwise "which he would possess if acting in the exercise of his ordinary jurisdiction."

(Order by justice. Act of 1889, s. 13, subs. (3).)

(3) If upon the certificates of the medical practitioners who examine the alleged lunatic, or after such other and further inquiry as the justice thinks necessary, he is satisfied that the alleged lunatic is a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, and that he is a proper person to be taken charge of and detained under care and treatment,

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the justice may by order direct the lunatic to be received and detained in any institution for lunatics to which, if a pauper, he might be sent under this Act, and the constable,

relieving officer, or overseer upon whose information the order has been made, or any constable whom the justice may require so to do, shall forthwith convey the lunatic to the institution named in the order. Sec. 13 (3).

2. (1) A constable, relieving officer, or overseer whose duty it is, under the principal Act, to convey a lunatic to or from an institution for lunatics, may make proper arrangements for the performance of the duty by some other person or persons. Act of 1891, s. 2, subs. (1). Provisions as to relieving officers.

Subs. (3) of sec. 14 re-enacts subs. (3) of sec. 13 of the Lunacy Act 1889.

The certificates.—As to certificates, see note to corresponding word in preceding section, *ante.*

Form of, Form 8, Sched. ii., *post.*

Two separate certificates are required, see par. 2 in Form 8, Sched. ii., *post.*

The medical practitioners.—See note to corresponding words in preceding subsection.

Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

The justice.—See note to subs. (1), *ante.*

After such other and further inquiry . . . charge of him.—As to procedure and powers of justice see notes to preceding subsection.

Is cruelly treated or neglected.—The ill-treatment or wilful neglect of a lunatic could be punished under sec. 322, *post.*

Relative.—Definition of, sec. 341, *post.* Possibly the word "relative" is used instead of the wider term "relation," because the words "other persons" cover all cases.

And that he is a proper person . . . treatment.—The justice must be satisfied not only negatively as to the absence of proper care and control, but positively that the lunatic is a proper person to be detained under care and treatment. On this latter point the medical practitioners express an opinion in their certificates, see Form 8, Sched. ii., *post.*

Order.—Form of, see Form 15, Sched. ii., *post.*

As to use of forms, see sec. 339, *post.*

Wilful misstatement of material fact in, a misdemeanour, sec. 317, subs. (1), *post.*

As to protection of persons making, sec. 330, *post.*

Direct.—In subs. (2), *ante*, the justice "directs and authorises" the medical examination. The latter word is perhaps, however, omitted here as unnecessary, as a reception order both contains (see Forms 3 and 12, Sched. ii., *post*) and is in itself an authority to the person conveying the lunatic to an institution or required to receive and detain him there (sec. 35, subs. (1), *post*).

Sec. 13 (3).

Received and detained.—The detention of a lunatic may be justified at common law without any statutory authority, by showing that it was necessary for his safety or that of others, *ante* p. 86.

Any institution for lunatics.—Definition of institution for lunatics, sec. 341, *post.*

As to institutions to which the lunatic may be sent, see sec. 27, *post.*

A lunatic sent to an institution for lunatics under this section (or sec. 16, *post*) of this Act is to be classified as a pauper, until it is ascertained that he is entitled to be classified as a private patient, see sec. 3, of Act of 1891, *inf.*

A pauper.—Definition of, sec. 341, *post.*

The constable, relieving officer, or overseer.—See note to subs. (1), *ante.*

Or any constable, etc.—Where, *e.g.*, the information has not been laid by a constable, relieving officer, or overseer, see note to subs. (1), *sup.* But there is nothing to prevent the justice where the information has been laid by a constable from ordering another constable to convey the lunatic to the institution named in the order.

Convey.—As to protection of persons putting the Act in force, see sec. 330, *post.*

Under the Act of 1891, sec. 2, subs. (1), *ante*, a constable, relieving officer, or overseer may make proper arrangements for the performance of this duty by some other person or persons.

Named in the order.—Form 15, Sched. ii., *post.*

As to power of justice to suspend execution of order, sec. 19, *post.*

As to power of justice to order payment of expenses of carrying it into effect, sec. 285, *post.*

As to liability for expenses of maintenance, see sec. 286, *post.*

As to temporary removal to workhouse, see sec. 21, *post.*

Act of 1891, s. 3. Classification of lunatics received under secs. 13 and 16 of principal Act.

3. A lunatic sent to an institution for lunatics under section thirteen (or sixteen) of the principal Act shall be classified as a pauper until it is ascertained that he is entitled to be classified as a private patient.

Lunatic.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Section sixteen.—See *post.*

Pauper.—Definition of, sec. 341, *post* p. 132.

Until . . . patient, i.e. until it is ascertained that he does not fall within the definition of "pauper."

In re Steneult[1] an application was made for a *habeas corpus* to obtain the release from the Claybury Asylum of one Steneult, there detained as a pauper lunatic. The man was a retired engine-driver, and was entitled to a pension from the Great Northern Railway Company, and

[1] 1894, L.J. 2nd June.

Sec. 14 (1).

was also possessed of property worth about £1400. He had been placed in the asylum by the poor-law authorities, and his release was sought by his sister, his only next-of-kin, that he might be put under her care. The medical superintendents of the asylum, to whom the rule *nisi* was directed, said that they had no power to release Steneult until certain preliminary proceedings had been taken under the Lunacy Acts, but it was decided that they could classify him as a private patient, and could then release him; and the Court (Mr. Justice Cave and Mr. Justice Wright) therefore directed the writ to go if the man was not released within twenty-four hours, saying that the medical officers had misread the Acts, and ought to have communicated with the visiting committee on discovering the pecuniary position of the patient. For this reason they adjourned consideration of the question whether it is competent to make an order for costs in cases where a writ of *habeas corpus* is actually issued. On this point, on May 28, the Court decided they were competent to make an order for payment of the applicant's costs, and thereby settled a moot point in Crown practice. Their decision rested on their reading of the effect of section 5 of the Judicature Act 1890.

Notice to be given of pauper lunatic who ought to be sent to an asylum.

14. (1) Every medical officer of a union who has knowledge that a pauper resident within the district of the officer is or is deemed to be a lunatic and a proper person to be sent to an asylum, shall, within three days after obtaining such knowledge, give notice thereof in writing to the relieving officer of the district, or if there is no such officer, to an overseer of the parish where the pauper resides.

This subsection is based on the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), sec. 67; Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111), sec. 19.

Medical officer.—Definition of, sec. 341, *post.*

Union.—Definition of, sec. 341, *post.*

Pauper.—Definition of, sec. 341, *post.*

"Deemed to be."

Is or is deemed to be.—As to these words, see note to sec. 13, subs. (1), *ante.* The medical officer need not go further than common report, in his notice, either as to the alleged lunacy or as to the propriety of sending the party to an asylum. It is otherwise under sec. 13, subs. (1), *ante*, relating to lunatics not paupers and not wandering at large. There the informant states that the party "is deemed to be a lunatic," and "is not under proper care or control, or is cruelly treated or neglected," etc. On the other hand, a relieving officer or overseer acting on his own initiative under subs. (2), *inf.*, must give notice to the justice if he has merely knowledge that the pauper "is deemed to be a lunatic."

Sec. 14 (1), (2).

Lunatic.—Definition of, sec. 341, *post.*

Asylum.—Definition of, sec. 341, *post.*

"Within three days." Notice where two or more relieving officers.

Within three days after.—The day of obtaining the knowledge is excluded.[1] The term "days" means all days, Sunday, etc., included.

The relieving officer . . . an overseer.—Notice must be given to the relieving officer of the district, if there is one. Where, in a union, there are two or more relieving officers, and the guardians, with the sanction of the Local Government Board, direct one of them to discharge the duties of a relieving officer in respect of lunatics, notice should be given to *that* officer, and it will be the duty of every other relieving officer in the union to inform him of any medical notice which he has received, or of any knowledge which he has otherwise acquired, as to a case coming within this or the following subsection. The overseer has no *locus standi* if there is a relieving officer.

(Notice by relieving officer, etc.)

(2) Every relieving officer and every overseer of a parish of which there is no relieving officer, who respectively have knowledge, either by notice from a medical officer or otherwise, that any pauper resident within the district or parish of the relieving officer or overseer is deemed to be a lunatic, shall, within three days after obtaining such knowledge, give notice thereof to a justice having jurisdiction in the place where the pauper resides.

This subsection is based on the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), sec. 67; and the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111), sec. 19.

Lunacy not "sickness" entitling to relief.

Lunacy is not sickness within the meaning of Art. 215 of the General Consolidated Order, so as to entitle the relieving officer to give the lunatic medical relief.

Every relieving officer, etc.—In urgent cases the relieving officer may himself remove to the workhouse under sec. 20, *post.*

Knowledge . . . by notice from a medical officer . . . that any pauper . . . is deemed to be a lunatic.—A medical officer giving notice must also state that the pauper is or is deemed to be a proper person to be sent to an asylum. See note to preceding subsection.

Medical officer.—Definition of, sec. 341, *post.*

Or otherwise.—A relieving officer having knowledge "otherwise" that any pauper is deemed to be a lunatic must also give notice. Under the Act of 1853, sec. 67 (*sup.*), knowledge that a pauper was a *proper person to be sent to an asylum* was also a condition precedent to such notice being given. But the words in italics were repealed by the Act of 1862, sec. 19.

Within three days.—See note to subs. (1).

[1] *Williams* v. *Burgess*, 1840, 10 L.J. Q.B. 10.

Sec. 14 (2), (3).

Jurisdiction in case of boroughs without separate quarter sessions.

A justice.—The justice need not be "specially appointed" (see sec. 10, *sup.*), as in the case of lunatics ill-treated or neglected (sec. 13, subs. (1), *ante*). The justice having jurisdiction, etc., is generally a borough justice. But in the case of a borough not having a separate court of quarter sessions, the county justices have jurisdiction within the borough concurrently with the borough justices under sec. 154 of the Municipal Corporations Act 1882. Where, therefore, a pauper resides in the borough, notice may be given to either the county or the borough justices; if he resides out of the borough, the notice should be given to a county justice. It is "the place where the pauper resides" that determines the jurisdiction.[1]

(3) A justice, upon receiving such notice, shall by order require the relieving officer or overseer giving the notice, to bring the alleged lunatic before him or some other justice having jurisdiction in the place where the pauper resides, at such time and place within three days from the time of the notice to the justice as shall be appointed by the order.

This subsection is based on the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), sec. 67; and the Lunacy Act 1855 (18 & 19 Vict. c. 105), sec. 15.

A justice.—See note to preceding subsection. Definition of, sec. 341, *post.*

Such notice.—See note to preceding subsection.

By order.—The order need not be under seal (Act of 1855 (*sup.*), sec. 15, amending Act of 1853 (*sup.*), sec. 67).

The relieving officer.—See note to subs. (1), *sup.*

Giving the notice.—The order must be made on the officer or overseer giving the notice. See note to "every relieving officer" in preceding subsection.

Bring.—Query whether the relieving officer has any right to break into a house where admission is denied, for the purpose of executing the order. See subss. (1) and (2), *sup.*

Lunatic.—Lunatic here means a pauper deemed to be a lunatic. For ordinary definition of lunatic, see sec. 341, *post.*

Some other justice having, etc.—He need not be "specially appointed" under sec. 10, subs. (1), *ante.*

As to subsequent proceedings by the justice, see sec. 16, *post.*

Pauper.—Definition of, sec. 341, *post.*

"Within three days."

Within three days from, i.e. from the time of receiving the notice, the day of receipt excluded. As these proceedings are *quasi*-judicial,

[1] Cp. 54 J.P. 380.

Sec. 15 (1).

query whether the order can be either made[1] or executed[2] on a Sunday.

Lunatic wandering at large to be brought before a justice.

15. (1) Every constable and relieving officer and every overseer of a parish who has knowledge that any person (whether a pauper or not) wandering at large within the district or parish of the constable, relieving officer, or overseer is deemed to be a lunatic, shall immediately apprehend and take the alleged lunatic, or cause him to be apprehended and taken, before a justice.

This subsection re-enacts part of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), sec. 68.

Duty imposed on constable, etc., equally.

Every constable, etc.—Here again, as under sec. 13, *ante*, the *duty* is imposed upon constables, relieving officers, and overseers equally, indifferently, and independently; *aliter*, under sec. 14, *sup.*, and any other person has a *right*, not, of course, to apprehend the alleged lunatic, but to lay an information before the justice that he is wandering at large, see subs. (2), *inf.* As to where in a union there are two or more relieving officers, see note to corresponding words in sec. 13, subs. (1), *ante*.

Knowledge.—See notes to "is deemed to be" in sec. 13, subs. (1); sec. 14, subs. (1), *ante*.

Any person (*whether a pauper or not*).—Definition of pauper, sec. 341, *post*.

The case of a lunatic (*not a pauper and not wandering at large*) who is not under proper control or is cruelly treated, is dealt with in sec. 13, *ante*. Sec. 14, *ante*, deals with the case of a *pauper* lunatic who ought to be sent to an asylum. The present section deals with the case of a lunatic (*whether a pauper or not*) wandering at large.

Wandering at large."

Wandering at large.—Wandering at large means wandering aimlessly without any definite ideas as to destination. The words possibly imply also an entire absence of care or control as distinguished from an absence of proper care or control. An eccentric passion for long walks does not constitute wandering at large.[3]

"Deemed to be."

Is deemed to be.—Common report is sufficient. See notes to sec. 13, subs. (1); sec. 14, subs. (1), *ante*.

[1] Cp. *MacKalley's* case, 9 Jac. I. 9 Co. 64. But see *Reg.* v. *Kent*, 1854, 18 J.P. 327.

[2] 29 Car. II. c. 7, sec. 6.

[3] See curious and amusing case noted in 56 J.P. 25, and 58 J.P. 693. See also the case of the lunatic soldiers who were turned out by the War Office authorities in the parish of St. Margaret's, Rochester, with notice to the relieving officer that as they thereby became wandering lunatics it was his duty to deal with them. The magistrates at Chatham dismissed proceedings against the overseer of St. Margaret's for refusal to apprehend these soldiers as wandering lunatics, and declined to state a case for the Court of Queen's Bench.—*Times*, 28th Nov. 1839. 14th Report Commissioners in Lun. p. 65.

Sec. 15 (1), (2).

Lunatic.—Definition of, sec. 341, *post.*

Apprehend.—As to immediate removal of lunatics to workhouses, see sec. 20, *post.* The apprehension and detention of a lunatic without statutory authority may be justified at common law, if shown to be necessary for the safety of the lunatic or other persons, see *ante*, p. 86.

A justice.—He need not be specially appointed under sec. 10, *ante*, but must have jurisdiction in the district where the alleged lunatic is wandering at large. See subs. (2), *inf.*

As to protection of persons putting the Act in force, see sec. 330, *post.*

(2) Any justice, upon the information upon oath of any person that a person wandering at large within the limits of his jurisdiction is deemed to be a lunatic, may by order require a constable, relieving officer, or overseer of the district or parish where the alleged lunatic is, to apprehend him, and bring him before the justice making the order, or any justice having jurisdiction where the alleged lunatic is.

This subsection re-enacts part of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), sec. 68, and the Lunacy Act 1855 (18 & 19 Vict. c. 105), sec. 15.

Any justice. Justice cannot transfer under s. 24, subs. (2).

Any justice. — He need not be "specially appointed" under sec. 10, *ante*, but must have jurisdiction in the place where the alleged lunatic is wandering, *v. inf.* the words "within the limits of his jurisdiction." As a justice acting under this section is not a judicial authority, he cannot transfer the case to another justice not having jurisdiction under sec. 24, subs. (2) of the Act of 1891, *ante* p. 112, even if the notice or information contemplated could, which is very doubtful, be regarded as a petition for a summary reception order.

Information upon oath.—Wilful misstatement will probably be punishable as perjury.

Any person.—Subs. (1) does not take away the right of any member of the public to inform the justice upon oath that a person deemed to be a lunatic is wandering at large within his jurisdiction. See also subs. (2) of sec. 13, *ante.* Of course such an informant has no right to apprehend the alleged lunatic, unless such apprehension is necessary for his safety and that of others, see *ante* p. 86. He might, however, convey to the relieving officer, constable, or overseer "knowledge" on which the former could act under subs. (1) of this section, *sup.* p. 130.

Wandering at large.—See note to corresponding words in preceding subsection, *sup.*

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Within the limits.—See note to "any justice," *sup.*

Is deemed to be.—See notes to corresponding words in sec. 13, subs. (1); sec. 14, subs. (1); and sec. 15, subs. (1). Common report is sufficient.

Order.—The order need not be under seal (Lunacy Act of 1855 (18 & 19 Vict. c. 105), sec. 15).

A constable, etc.—This duty cannot be delegated under sec. 2, subs. (1) of the Act of 1891, *ante* p. 125.

The justice . . . or any justice having jurisdiction.—See notes to "any justice," *sup.*

Lunatic.—Definition of, see subs. (1), *sup.*, and sec. 341, *post.*

As to protection of persons putting the Act in force, see sec. 330, *post.*

Lunatic brought before a justice may be sent to an institution for lunatics.

16. The justice before whom a pauper alleged to be a lunatic or an alleged lunatic wandering at large is brought under this Act shall call in a medical practitioner, and shall examine the alleged lunatic, and make such inquiries as he thinks advisable, and if upon such examination or other proof the justice is satisfied in the first-mentioned case that the alleged lunatic is a lunatic and a proper person to be detained, and in the secondly-mentioned case, that the alleged lunatic is a lunatic, and was wandering at large, and is a proper person to be detained, and if in each of the foregoing cases the medical practitioner who has been called in signs a medical certificate with regard to the lunatic, the justice may by order direct the lunatic to be received and detained in the institution for lunatics named in the order, and the relieving officer, overseer, or constable who brought the lunatic before the justice, or in the case of a lunatic wandering at large, any constable who may by the justice be required so to do, shall forthwith convey the lunatic to such institution.

Form 8.

Form 12.

Act of 1891, s. 3. Classification of lunatics received under ss. 13, 16 of principal Act.

3. A lunatic sent to an institution for lunatics under section (thirteen or) sixteen of the principal Act shall be classified as a pauper, until it is ascertained that he is entitled to be classified as a private patient.

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Section 16 of the Act of 1890 re-enacts parts of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), secs. 67, 68; and cp. Act of 1889 (52 & 53 Vict. c. 41), sec. 94.

Scope of section.

The justice.—This section prescribes the procedure to be adopted by a justice before whom there has been brought (*a*) a pauper alleged to be a lunatic, under sec. 14, subs. (2), *ante*; or (*b*) an alleged lunatic (whether pauper or not) wandering at large, under sec. 15, *ante*. In either case the justice, though he need not be "specially appointed" under section 10, *ante*, must have jurisdiction in the place where the alleged lunatic is (*v.* notes to corresponding words in sec. 14, subs. (1), *ante*, and sec. 15, subs. (1), *ante*). A justice, dealing with an alleged lunatic (not a pauper, and not wandering at large) who is not under proper care, or is cruelly treated or neglected, must be a "judicial authority," *i.e.* (see sec. 9, subs. (1), *ante*), and must be "specially appointed" under sec. 10, *ante* (see sec. 13, subs. (1), *ante*).

Definition of justice, sec. 341, *post*.

A pauper.—Definition of, sec. 341, *post*; and see notes to sec. 14, subs. (1), *ante*, and sec. 18, *post*.

Lunatic.—Definition of, sec. 341, *post*.

An alleged lunatic wandering at large.—See notes to sec. 15, subs. (1), *ante*.

Provisions as to preliminary proceedings directory.

Is brought under this Act.—The provisions of the statute as to preliminary proceedings are meant as directions, and not for the purpose of conferring jurisdiction on the justice, constable, relieving officer, or overseer.[1]

How far approval of medical practitioner by justices necessary. *Reg.* v. *Whitfield.*

Shall call in.—No formal summons or order for the medical examination is necessary. In the Lunatic Asylums Act of 1853 (16 & 17 Vict. c. 97), sec. 68, the words are "call to *his* . . . *assistance* a physician, surgeon, or apothecary." In *Reg.* v. *Whitfield*,[2] a case decided under that section,[3] Lord Justice Lindley said: "The justices are not to act on a certificate signed by a medical man of whom they know nothing; he must be a person approved by them, and called in by them to their own assistance." If this *obiter dictum* merely means that the justices are not to act on a certificate presented to them signed by a practitioner whom they have not called in, and of whom they know nothing, it is obviously unexceptionable. But if it is to be taken as going further, and implying any duty on the part of the justice to know the qualifications and competence of the medical practitioner whom he calls in, it is respectfully submitted that even under the Act of 1853 this construction could not have prevailed, and that any person known by the justices to be a "physician, surgeon, or apothecary" might have been called in, since

[1] *Reg.* v. *Rhyddlan*, 1850, 14 Q.B., at pp. 338, 339.

[2] 1885, 15 Q.B.D. 122. Lord Coleridge, L.C.-J., dissented from the majority of the Court of Appeal in this case.

[3] An admirable analysis of sec. 68 of the Lunatic Asylums Act of 1853, which is very long and complicated, will be found in the judgment of Lindley, L.J., in *Reg.* v. *Whitfield*, *ubi sup.*, at pp. 146-148.

Sec. 16.

there must be a presumption that any member of the classes indicated by the Legislature would be qualified to render them the necessary assistance. These observations apply *a fortiori* to the words "call in" in the present subsection, which are no longer followed by the words "his assistance."[1] It is conceived that all that the justice is bound to do is to call in one whom he knows to be a medical practitioner qualified under the medical Acts (see definition of "practitioner," sec. 341, *post*).

It may be, and doubtless is, a prudent course for justices exercising their powers under this subsection to call in persons of whose competence they are assured. But there is no obligation to do so imposed upon them by the statute; and if they are *bonâ fide* satisfied, as the result of their examination and inquiry, on the points mentioned in this subsection, they are entitled to make a summary reception order, and are protected in doing so (see sec. 330, *post*). The procedure under these sections is meant to be summary, and any person aggrieved by a justice's order has a right of appeal to quarter sessions (sec. 327, *post*).

Medical practitioner not compellable to act.

A medical practitioner cannot be compelled to act.

A medical practitioner.—Definition of, sec. 341, *post*.

Protection of, sec. 330, *post*.

As to power of justice to order remuneration of, see sec. 285, *post*.

Medical officer of workhouse, query whether can be called in.

The medical officer of a workhouse, if called in by the justice, is not disqualified from certifying under this section, except in the case mentioned in sec. 24, subss. 3 and 4, *post*.

Examination by justices. Must be real. Time, place, and manner of, discretionary. Presence of medical practitioner during examination unnecessary. Alleged lunatic need not be informed as to object of.

Shall examine.—The examination must be a *real* one, *i.e.* an examination made personally and *bonâ fide* by the justice for the purpose of satisfying himself as to the sanity or insanity of the person examined. The time, and place, and manner, and character, and duration of the examination are one and all left to his discretion, and he will not be considered as having acted without jurisdiction by reason only of his having made a less full and complete examination than the Court may think he ought to have made. Nor is it necessary that the medical practitioner above referred to should be actually present when the justice sees and personally examines the alleged lunatic, or that the latter should be made aware of the object of the examination.[2] "The language" of [the section],[3] said Lindley, L.J., in *Reg.* v. *Whitfield*,[4] "does not point to anything like such an investigation as takes place under a writ *de lunatico inquirendo*. The object of the statute is not to enable justices to adjudicate a person to be *non compos mentis*, but to enable them to place under proper care and control persons who they are satisfied are lunatics, and require to be so placed. They have to act in cases of emergency and of great danger, as well

[1] It is noticeable, however, that in the Form of Order for the reception of a pauper lunatic or a lunatic alleged to be wandering at large, the words still are "having called in to my assistance a duly qualified medical practitioner," see Form 12, Sched. ii., *post*.

[2] *Reg.* v. *Whitfield*, 1885, 15 Q.B.D. 122.

[3] *i.e.* sec. 68 of the Lunatic Asylums Act 1853, from which the present subsection is derived.

[4] 15 Q.B.D., pp. 149, 150.

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as in other cases; their measures are precautionary measures only; if they make a mistake it can soon be corrected.[1] . . . Moreover, it must never be forgotten, in dealing with the insane, that the whole object of such an examination as justices could be expected to make, would frequently be frustrated by informing the insane person that justices were about to examine him with reference to his insanity. The statute has given justices of the peace and medical men large powers; but the statute is based upon the theory that they can be trusted."

As to examining the lunatic in his own house, see sec. 17, *post*.

Lunatic.—Definition of, sec. 341, *post*.

"Inquiries."

Inquiries.—*Semble* of the alleged lunatic. In sec. 6, subs. (1), *ante*, dealing with the procedure upon petitions for reception orders, the words "of or concerning the alleged lunatic" are expressly used.

Such examination.—See note to "shall examine," *sup*.

"Other proof."

Or other proof.—If the justice is satisfied by his personal examination, and the medical practitioner certifies, he need go no further. If, however, he is not so satisfied, he must obtain "other proof"—whether on oath or not. The word "other" implies that the examination and inquiries are relevant "proof"; indeed, if the justice is satisfied with them, they are conclusive proof.

In the first-mentioned case, i.e. of a pauper alleged to be a lunatic, see sec. 14, *ante*, and notes thereon. Here the justice must be satisfied that the pauper is (1) a lunatic, and (2) a proper person to be detained.[2] The justice must also be satisfied that the lunatic is either in receipt of relief or in such circumstances as to require relief for his proper care (sec. 18, *post*).

In the secondly-mentioned case, i.e. of a lunatic—whether a pauper or not—wandering at large, see sec. 15, *ante*, and notes thereon. Here the justice must be satisfied that the party (1) is a lunatic, (2) was wandering at large, and (3) is a proper person to be detained.[2]

A medical certificate.—Form of, Form 8, Sched. ii., *post*. As to use of forms, see sec. 339, *post*.

Wilful misstatement of material fact in, a misdemeanour, sec. 317, subs. (2), *post*.

Protection of persons signing, sec. 330, *post*.

Remuneration of practitioner, sec. 285, *post*.

Can order be made or executed on Sunday?

Order.—Query whether an order can be made on Sunday, as it is a *quasi*-judicial act,[3] or executed on Sunday (29 Car. II. c. 7, sec. 6).

Form of, Form 12, Sched. ii., *post*. It is noticeable that in this form the words are "having called in to my assistance a duly qualified medical practitioner," *v.* notes to "call in," *sup*.

As to use of forms, see sec. 339, *post*.

As to protection of persons making orders, sec. 330, *post*.

Wilful misstatement of material fact in, is a misdemeanour, sec. 317, subs. (1), *post*.

[1] See sec. 327, *post*.

[2] Cp. *Reg. v. Barnsley*, 1849, 12 Q.B. 193; *Reg. v. Wakefield*, 1880, 48 J.P. 326.

[3] *MacKalley's* case, 9 Jac. I. 9 Co. 69. But see *Reg. v. Kent*, 1854, 18 J.P. 327.

Sec. 17.

As to power of justice to suspend execution of order, see sec. 19, *post.*

As to power of justice in regard to expense of carrying it into effect, sec. 285, *post.*

As to power of justice to order temporary removal to workhouse, see sec. 21, *post.*

Direct.—The reception order both contains (see Forms 3 and 12, Sched. ii., *post*) and is itself an authority both to the person directed to convey the lunatic to the institution and to the person required to receive and detain him there, sec. 35, subs. (1), *post.* See notes to "authorise," *ante.*

The institution.—Definition of "institution for lunatics," sec. 341, *post.*

As to the institution to which he may be sent, see sec. 27, *post.*

As to how the lunatic is to be classified, see sec. 3 of Act of 1891, p. 132.

As to payment of expenses of maintenance, see secs. 286-298, *post.*

The relieving officer, etc.—See notes to corresponding words in sec. 13, subs. (1); sec. 14, subs. (1); sec. 15, subs. (1), *ante.*

In the case of a lunatic . . . large.—See notes to sec. 15, subs. (1), *ante.*

As to sec. 3 of the Act of 1891, see notes to sec. 13, *ante.*

Power to examine alleged lunatic at his own abode or elsewhere.

17. Where, under this Act, notice has been given to, or an information upon oath laid before a justice that a pauper resident within the limits of his jurisdiction is deemed to be a lunatic, and a proper person to be sent to an asylum, or that a person, whether a pauper or not, wandering at large within the limits aforesaid, is deemed to be a lunatic, such justice may examine the alleged lunatic at his own house or elsewhere, and may proceed in all respects as if the alleged lunatic had been brought before him.

This section is based on the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), secs. 67, 68.

Under this Act, i.e. under secs. 14 and 15, *ante.*

Notice has been given to.—Sec. 14, subs. (2), *ante.*

Or an information, etc.—Sec. 15, subs. (2), *ante.*

A justice.—See corresponding words in sec. 14, subs. (1); sec. 15, subs. (1), *ante.*

A pauper . . . asylum.—Sec. 14, *ante.* Definitions of "pauper," "lunatic," "asylum," see sec. 341, *post.* The words "is deemed to be" mean "generally taken," see note to sec. 13, subs. (1), *ante.*

Sec. 18.

"May."

A person . . . lunatic.—Sec. 15, subs. (2), *ante.*

May examine.—See note to "shall examine" in preceding section, *sup.* The justice may, in the alternative, require the lunatic to be brought before him. The word "may" has here a permissive effect.[1]

Object of section.

At his own house, i.e. the house of the alleged lunatic. The object of this section is of course to obviate the excitement, pain, and possible injury to an alleged lunatic's health, which might be caused in certain cases by bringing him before the justice, particularly if the latter happened to be a police magistrate, in which case the party would ordinarily have to be produced in Court. This section does not apply to the case of a lunatic, neither a pauper nor wandering at large, but not under proper control, or cruelly treated or neglected. But in sec. 13, subs. (2), *sup.*, which deals with that case, the judicial authority is expressly authorised to visit the alleged lunatic.

Or elsewhere, e.g. in a private room of the Court, in the case of a justice who is a police magistrate, or at any place where the alleged lunatic is. Thus in *Reg.* v. *Whitfield*[2] the justices endeavoured to see the alleged lunatic at a library where he happened to be, in order to avoid remark. The words "or elsewhere" meet the case of the lunatic "wandering at large."

Procedure.

May proceed . . . him.—See sec. 16, *ante.* A medical practitioner must be called in, and the justice must be satisfied on the points indicated in sec. 16, *ante*, whether he visits the alleged lunatic at his own house or not. The present section is enacted for the benefit of the alleged lunatic, and not for the purpose of enabling summary reception orders to be made without due deliberation and regularity.

When lunatic may be treated as a pauper. (Act of 1889, sec. 20.)

18. A justice shall not sign an order for the reception of a person as a pauper lunatic into an institution for lunatics, or workhouse, unless he is satisfied that the alleged pauper is either in receipt of relief, or in such circumstances as to require relief for his proper care. If it appears by the order that the justice is so satisfied, the lunatic shall be deemed to be a pauper chargeable to the union, county, or borough properly liable for his relief. A person who is visited by a medical officer of the union, at the expense of the union, is, for the purposes of this section, to be deemed to be in receipt of relief.

This subsection re-enacts sec. 20 of the Lunacy Act 1889.

A justice.—Definition of, sec. 341, *post*, and see notes to corresponding word in sec. 14, subs. (1); sec. 15, subs. (1), *ante.*

[1] See *Julius* v. *Bishop of Oxford*, 1880, 5 App. Cas. 214.
[2] 1885, 15 Q.B.D. 122.

Sec. 18.

An order.—See notes to "order" in sec. 16, *ante.*

Form of, Form 12, Sched. ii., *post.*

Misstatement of material fact in, a misdemeanour, see sec. 317, subs. (1), *ante.*

Protection of persons signing, sec. 330, *post.*

A pauper lunatic.—Definitions of "pauper" and "lunatic," sec. 341, *post.*

Scope of section.

Under this section a justice may send to an institution for lunatics as a pauper any lunatic who is either in receipt of relief or in such circumstances as to require relief for his proper care. It is conceived that in order to give full effect to the intention of the Legislature in enacting this section, it ought to be held to apply not only to lunatics brought before the justice as paupers under sec. 14, *ante*, but to wandering lunatics under sec. 16, *ante*,[1] and to lunatics not under proper control, under sec. 13, subs. (2), *ante*, though in the last case the procedure is different, and two medical certificates are required.

Institution for lunatics.—Definition of, sec. 341, *post.* As to institutions to which pauper lunatics are to be sent, sec. 27, subs. (3), *post.*

Workhouse.—Definition of, sec. 341, *post.*

As to removal of alleged lunatics to workhouse, see secs. 20 and 21.

When he is satisfied.—As to the other points on which the justice must be satisfied, see sec. 16, *ante.* The fact that the justice is so satisfied is stated in the order. Form 12, Sched. ii., *post.*

Receipt of relief.—These words include visits by the medical officer of the union at the expense of the union. (See last clause in the present section.)

Such circumstances . . . proper care, i.e. such circumstances that without relief the lunatic will not be properly cared for. See note on "scope of section," *sup.*

If it appears by the order.—See Form 12, Sched. ii., *post.*

As to use of forms, sec. 339, *post.*

The fact of the relief or the destitution must appear in the order if the lunatic is to be deemed to be chargeable, etc.

As to amendment of reception orders, see sec. 34, subs. (1), *post.*

"Deemed to be," different meanings of.

Shall be deemed to be, i.e. "taken *primâ facie* to be." The words are used below in the sense of "taken conclusively to be." See the judgment of James, L.J., in *ex parte Walton.*[2]

In sec. 13, subs. (1), *ante*, the word "deemed" is used in the sense of generally reputed.

Chargeable.—As to chargeability, see sec. 286, *post.*

Union.—Definition of, sec. 341, *post.*

[1] Form 12, Sched. ii., *post*, which contains a marginal reference to sec. 16, appears to contemplate this construction, by the insertion of the words "or in such circumstances," etc. These words would cover the case of a person becoming lunatic who is not in receipt of relief, but is in such circumstances that if sent to an asylum he could only be maintained there as a pauper. 54 J.P. 397.

[2] 1881, 17 Ch.D., at p. 756.

County.—Definition of, sec. 341, *post.*

Visited.—The section is not, apparently, confined to cases where the lunatic has been visited by the medical officer before information as to the lunacy is given, under secs. 13 and 14, *ante.*

Medical officer.—Definition of, sec. 341, *post.*

To be deemed.—See note to "shall be deemed," *sup.*

The visit of the medical officer is medical relief, and of itself makes the lunatic a pauper.

In the case of a lunatic receiving such relief, the relieving officer should proceed under sec. 14, subs. (2), *ante*, and not under sec. 13, *ante.*

Sec. 19 (1), (2).

Visitation by medical officer before information unnecessary.

Visitation of medical officer is medical relief.

19. (1) A justice making an order for the reception of a lunatic otherwise than upon petition, in this Act called a "summary reception order," may suspend the execution of the order for such period not exceeding fourteen days as he thinks fit, and in the meantime may give such directions or make such arrangements for the proper care and control of the lunatic as he considers proper.

Suspension of removal under reception order.

This subsection is based on the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), secs. 67, 68, amended by Act of 1889, sec. 13, subs. (4).

A justice.—See notes to corresponding word in sec. 13, subs. (1); sec. 14, subs. (1); sec. 15, subs. (1); sec. 16, *ante.*

An order . . . petition.—This is the definition of "summary reception order." Only a justice "specially appointed" (sec. 10, subs. (1), *ante*) can make an order for the reception of a lunatic on petition. See sec. 9, subs. (1), *ante.*

Suspend.—As, for instance, where on visiting the alleged lunatic (see sec. 13, subs. (2), and sec. 17, *ante*) he entertained doubts whether he was fit to be removed, or where he thought there was some chance of relatives coming forward, sec. 21, *post.*

Removal, when suspended.

As to suspension of removal on certificate of medical practitioner, see subs. (2), *inf.*

Not exceeding fourteen days, i.e. from, but excluding, the date of the suspension. "Days" means "all days," Sundays, etc., included.

Directions . . . arrangements.—These words doubtless refer chiefly to the interim order mentioned in sec. 21, subs. (2), but they would also cover inquiries about or notices to the friends of the lunatic; and *semble*, where the justice thought the lunatic unfit to be removed, directions to a medical practitioner to examine him. See subs. (2), *inf.*

(2) If a medical practitioner who examines a lunatic as to whom a summary reception order has been made,

Sec. 19 (2). certifies in writing that the lunatic is not in a fit state to be removed, the removal shall be suspended until the same or some other medical practitioner certifies in writing that the lunatic is fit to be removed, and every medical practitioner who has certified that the lunatic is not in a fit state to be removed shall, as soon as in his judgment the lunatic is in a fit state to be removed, be bound to certify accordingly.

This subsection is based on the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), secs. 67, 68; and the Lunacy Act 1889, sec. 13, subs. (5).

A medical practitioner.—Definition of, sec. 341, *post*. As to remuneration of, see sec. 285, *post*.

Cases contemplated by subsection.

Examines.—As to examination by, see sec. 13, subs. (2), and sec. 16, *ante*. The cases contemplated by this subsection appear to be such as these, *e.g.* (1) where a justice suspending execution of order under subs. (1), *sup.*, calls in a medical practitioner, or (2) where, an order having been made and not suspended, the alleged lunatic's medical attendant certifies as below.

Lunatic.—Definition of, sec. 341, *post*.

Summary reception order.—Definition of, subs. (1) *sup*.

Has been made.—As to the cases in which it may be made, see secs. 13 and 16, *ante*, and notes thereon.

Certificate.

Certifies.—No form is given. Form 8, Sched. ii., *post*, should be adapted. As to use of such forms, see sec. 339, *post*.

Wilful misstatement of material fact in such certificate a misdemeanour, see sec. 317, subs. (2), *post*.

As to protection of persons certifying, see sec. 330, *post*.

Meaning of words "some other medical practitioner."

Some other, etc.—This would meet the case where a justice had suspended the execution of a summary reception order (subs. (1), *sup.*), and a medical practitioner had by his directions examined the lunatic, and certified that he was not in a fit state to be removed. In such a case the justice may call in either the medical practitioner so certifying, or "some other" one. It cannot be intended, although the subsection is ambiguously expressed, that every medical practitioner examining a lunatic under the direction of a justice, and certifying him to be unfit for removal, should be bound to follow the case and grant the certificate referred to in the latter part of the subsection. The initiative must rest, it is submitted, with the justice. On the other hand, where a summary reception order has been made, and has not been suspended by the justice making it, and the removal of the lunatic has been arrested by the certificate of his medical attendant or any other practitioner, it might not be unreasonable to hold that the latter was bound to watch the case and certify again as soon as the lunatic was in a fit state to be removed. It is conceived that

this may be the meaning of the clause beginning "every medical practitioner who has certified," etc. Sec. 20.

Every medical practitioner . . . accordingly.—See preceding note.

20. If a constable, relieving officer, or overseer is satisfied that it is necessary for the public safety or the welfare of an alleged lunatic with regard to whom it is his duty to take any proceedings under this Act, that the alleged lunatic should, before any such proceedings can be taken, be placed under care and control, the constable, relieving officer, or overseer may remove the alleged lunatic to the workhouse of the union in which the alleged lunatic is, and the master of the workhouse shall, unless there is no proper accommodation in the workhouse for the alleged lunatic, receive and relieve, and detain the alleged lunatic therein, but no person shall be so detained for more than three days, and before the expiration of that time, the constable, relieving officer, or overseer shall take such proceedings with regard to the alleged lunatic as are required by this Act. Removal of lunatic to workhouse in urgent cases.

This section re-enacts sec. 2 of the Lunacy Act 1885 (48 & 49 Vict. c. 52).

If a constable, relieving officer, or overseer.—As to the cases in which it is the duty of these persons to take proceedings, see sec. 13, subs. (1); secs. 14 and 15, *ante*. As to where there are two or more relieving officers in a union, see Act of 1891, sec. 2, subs. (2), *ante*, p. 120.

Satisfied.—On both or either of the points indicated below, viz. that the public safety or the welfare of an alleged lunatic require his removal. No indication is given as to the means by which the relieving officer, etc., is to reach this conclusion. It is sufficient if he does reach it *bonâ fide*, and he is protected in acting upon it (sec. 330, *post*). The effect of this section is to vest an absolute discretion in the relieving officer, and he may inform his mind in any proper way. From this it follows that an action for negligence will not lie against a medical man who has granted a certificate in consequence of which a relieving officer sends a party to an asylum, since even if the certificate was the *causa sine qua non*, it was not the *causa causans* of the committal. The relieving officer has to make up his own mind and act on his own responsibility.[1] Wilful misstatement Meaning of "satisfied."

[1] *Thompson* v. *Schmidt*, 1891, 8 Times L.R. 120.

Sec. 20.

of a material fact in any such certificate would, however, be a misdemeanour, see sec. 317, subs. (2), *post.*

The public safety.—As to the apprehension of deranged persons intending to commit some crime, see note to sec. 2 of the Criminal Lunatics Act 1838 (1 & 2 Vict. c. 14), *post.* As to the temporary removal of lunatics to workhouses under justice's order, see sec. 21, *post.*

Lunatic.—Definition of, sec. 341, *post.*

With regard to whom it is his duty . . . Act.—As to these cases see secs. 13-15, *ante.*

May remove.—See note to "satisfied," *sup.*

Apparently the duty cannot be delegated under sec. 2, subs. (1) of the Act of 1891, *ante* p. 125, as that subsection authorises delegation only in the case of removal to (or from) an institution for lunatics, which does not include workhouse, see sec. 341, *post.*

Workhouse.—Definition of, sec. 341, *post.*

Union.—Definition of, sec. 341, *post.*

Want of proper accommodation.

Proper accommodation.—Either deficiency of room or absence of proper arrangements for the care and control of a dangerous lunatic would be a sufficient ground for refusal. If the master of the workhouse refuse to receive the lunatic on the ground of want of proper accommodation, steps should at once be taken to bring the lunatic before a justice, who may (*a*) if he think fit, inquire into the circumstances, and if satisfied that there is proper accommodation, deal with the case under sec. 21, *inf.*; or (*b*) send the lunatic to an asylum, under sec. 16, *ante*, if he consider that the case is not a workhouse one.

Receive.—As to protection of persons putting the Act in force, sec. 330, *post.*

Master of workhouse may incur and recover expenses.

Relieve . . . the alleged lunatic.—The words "relieve" and "alleged" give the master of the workhouse authority to incur and recover necessary outlay on behalf of the party brought to him for reception and detention, even if the latter is found by the justices not to be a lunatic at all. Independently of this enactment, however, such expenses are recoverable as "necessaries" at common law.[1]

No person . . . three days, i.e. from the day on which he is brought to the workhouse. The negative form of this provision should be noted. It might be argued that the section provides, not that a lunatic may be detained for three days from the day on which he is brought, but that he may not be detained for more than three days, *i.e.* three days in all. Days would include Sunday, but the date on which the lunatic is brought to the workhouse would be excluded. See note to sec. 35, subs. (1).

The constable . . . this Act.—As to these proceedings, see secs. 13, 14, 16-18, *ante*, and 21, *inf.*, and notes thereon.

It will be sufficient if the proceedings are commenced before the expiration of the third day, *e.g.* if in a case under sec. 13, subs. (2),

[1] *West Ham Union* v. *Pearson*, 1890, 62 L.T., N.S., 638, per Fry, L.J., and Mathew, J. See further as to a lunatic's contracts for necessaries, *ante* p. 15.

ante, information on oath, or in a case under sec. 14, subs. (2), *ante*, notice has been given to a justice before the expiration of the specified period. Sec. 21 (1).

Apart from statute, however, any person may justify the detention of a lunatic by showing that it is necessary for his own safety or that of others, see *ante* p. 86.

21. (1) In any case where a summary reception order might be made, any justice, if satisfied that it is expedient for the welfare of the lunatic, or for the public safety, that the lunatic should forthwith be placed under care and control, and if it appears to him that there is proper accommodation for the lunatic in the workhouse of the union in which the lunatic is, may make an order for taking the lunatic to and receiving him in that workhouse. Temporary removal of lunatic to workhouse under order of justice.

This subsection re-enacts sec. 3, subs. (1) of the Act of 1885 (48 & 49 Vict. c. 52).

In any case.—As to what these cases are, see secs. 13-16, and 18, *ante*, and notes thereon.

Summary reception order.—See preceding note. Definition of, sec. 19, subs. (1), *ante*. As to where a summary reception order has been made, see subs. (2), *inf.* It is conceived that the medical examination and certificate required in cases of summary reception orders are here unnecessary. Where summary order might be made.

Any justice.—He need not be specially appointed (sec. 10, subs. (1), *ante*), but must have jurisdiction in the place where the alleged lunatic is (see subs. (4), *inf.*) The order need not be made by the justice who might have made the summary reception order in cases coming under sec. 13, subs. (1), *ante*. "Any justice."

The corresponding words in the Act of 1885 were *and the justice or justices*. An opinion was expressed by the Law Officers in 1886 that borough justices of boroughs not having a separate quarter sessions are not justices of a borough within the meaning of secs. 67 and 68 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97) (re-enacted in substance by secs. 13-18 of the Act of 1890); and as sec. 3 of the Act of 1885 only gave jurisdiction to justices who could make orders under those sections, it seems that justices of a borough without a separate quarter sessions could not act under sec. 3 of that statute.[1] *Semble*, however, that the substitution of the words "any justice" for the words in italics (*sup.*) overrules this opinion. Boroughs without separate quarter sessions.

Satisfied.—See note to corresponding word in sec. 20, *ante*.

Public safety.—See note to corresponding word in sec. 20, *ante*.

The lunatic.—Definition of, sec. 341, *post*.

[1] Cp. 53 J.P. 779, 780.

Sec. 21 (1), (2).

Proper accommodation.—See note to corresponding words in sec. 20, *ante*.

Workhouse.—See note to corresponding word in sec. 20, *ante*.

The order.

Order.—No form is given. Form 11, Sched. ii., *post*, may be adapted. As to use of such forms, see sec. 339, *post*. As to protection of persons making orders, see sec. 330, *post*. Such order falls within the definition of "reception order," sec. 341, *post*, and any person acting under it is protected (see sec. 35, subs. (1), *post*). Independently of this, however, such persons would be protected under sec. 2, subs. (1) of the Act of 1891, *ante*; and see note to "may remove" in sec. 20, *ante*.

Justice *functus officio* after making.

The justice is *functus officio* when he has made the order. The order can, it is submitted, be made without the conditions of medical examination and certification—which must be fulfilled before "a summary order might be made"—having been complied with. The order may be made at the workhouse, at the justice's private residence, or at any other convenient place.

Taking . . . to.—The duty may be delegated under sec. 2, subs. (1) of the Act of 1891, *ante* p. 125; and see note to "may remove" in sec. 20, *ante*.

Receiving.—In this subsection authority to "relieve" is not, as in sec. 20, *ante* (*q.v.*), expressly given. It is, however, implied in the order to take charge of and detain the lunatic, and expenses incurred in relieving the lunatic are recoverable as "necessaries," even if the party is afterwards found to be sane.[1]

(Where may be made.)

(2) In any case where a summary reception order has been made, an order under this section may be made to provide for the detention of the lunatic until he can be removed.

Object of subsection.

This subsection re-enacts subs. (3) of sec. 3 of the Lunacy Act 1885 (48 & 49 Vict. c. 52), and meets cases where the execution of a summary reception order has been suspended (see sec. 19, *ante*) owing to absence of accommodation, the fact that the alleged lunatic is unfit to be removed, or the possibility of relatives or friends coming forward to take charge of him (sec. 22, *post*).

Where a summary . . . made.—See secs. 13-18, *ante*.

Where summary order has been made.

An order under this section, i.e. for the temporary removal of the lunatic to a workhouse. Sec. 19, subs. (1), *ante*, enables the justice in such cases "to make such arrangements for the proper care and control of the lunatic as he considers proper."

Until he can be removed.—The order is, however, limited to fourteen days (see subs. (3), *inf.*; and see sec. 19, subs. (1), *ante*), within which time a certificate from the medical officer of the work-

[1] *West Ham Union* v. *Pearson*, 1890, 62 L.T., N.S., 638.

house must be obtained. Arrangements should be made for a female accompanying female lunatics from the workhouse to the asylum.

Sec. 21 (3), (4).

(3) An order under this section shall not authorise the detention of a lunatic in a workhouse for more than fourteen days, after which period such detention shall not be lawful, except in accordance with the provisions of this Act as to the detention of lunatics in workhouses.

This subsection is based on subs. (2) of sec. 3 of the Lunacy Act of 1885 (48 & 49 Vict. c. 52), and subs. (11) of sec. 21 of the Lunacy Act 1889. See notes to preceding subsections.

An order under this section, i.e. either for the temporary removal of a lunatic to a workhouse, *v.* subs. (1), *sup.*, or under subs. (2).

Justice *functus officio* after making order.

The justice is *functus officio* after having made the order. A justice cannot take the certificate of a medical officer of a workhouse as to the continued detention of a lunatic after the fourteen days (see sec. 24, subs. (4), *post*). It is conceived that this is the only case in which a justice is prohibited from acting on the certificate of such officer.

Certificate of medical officer whether receivable.

Authorise.—The order is an authority for the period of fourteen days, see sec. 35, *post.*

Detention independent of order, when.

The lunatic may, however, be detained independently of the order for even longer, if necessary for the protection of the lunatic or others (*ante* p. 86).

Meaning of "days."

Days, i.e. in all, Sundays, etc., included, but excluding the date of the order.

It might be argued that the object of the Legislature being to secure that a party shall *not be detained for more* than a specified period, the cases in which such words as *at an interval of*, or *not less than*, occur do not apply.[1] But it is conceived that the day of the date of the order must be excluded.

The provisions of this Act.—See sec. 24, *post*, and notes thereon.

(4) An order under this section may be made by any justice having jurisdiction in the place where the lunatic is.

This subsection re-enacts subs. (4) of sec. 3 of the Lunacy Act 1885 (48 & 49 Vict. c. 52).

An order under this section.—See corresponding words in subs. (3).

[1] Cp. *Chambers* v. *Smith*, 1843, 12 M. & W. 2; *re Railway Sleepers Company*, 1885, 29 Ch.D. 204; *Ammerman* v. *Digges*, 1861, 12 Ir. C.L.R. Appx. 1. The words "from the date of," are, however, to be interpreted exclusively or inclusively according to context, *Pugh* v. *Duke of Leeds*, 1777, 2 Cowp., at p. 725.

Sec. 22

Any justice . . . is.—Even in cases under sec. 13, *ante*, where only a justice who is a judicial authority may make the summary reception order.

Lunatic.—Definition of, sec. 341, *post*. The section relates only to lunatics as to whom a reception order might be (see subs. (1), *sup.*) or has been (see subs. (2), *sup.*) made.

Power to allow a relation or friend to take charge of a lunatic.

22. In the case of a lunatic as to whom a summary reception order may be made, nothing in this Act shall prevent a relation or friend from retaining or taking the lunatic under his own care if a justice having jurisdiction to make the order, or the visitors of the asylum in which the lunatic is or is intended to be placed, shall be satisfied that proper care will be taken of the lunatic.

This section is based on part of sec. 68 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), and subs. (6) of sec. 13 of the Lunacy Act 1889.

In the case . . . made.—As to what these cases are, see secs. 13-18, *ante*, and notes thereon.

Lunatic.—Definition of, sec. 341, *post*. The section relates only to lunatics as to whom a summary order might be made.

Meaning of "relation."

Relation.—Probably "relation" has here a wider meaning than "relative" (sec. 341, *post*), and would include any person related to the lunatic by blood or marriage in any degree. The limitation of the definition of "relative" in the case of the presentation of petitions (see sec. 6, subs. (1), *sup.*), or the signing of reception orders (sec. 11, subs. (1), *sup.*) is intelligible enough. But here the policy of the Act is to encourage offers on the part of any relation or friend of an alleged lunatic to undertake to maintain him; and therefore, as the justice must be satisfied that proper care of the lunatic will be taken, there can be no objection to making the definition of relation as wide as possible.

Retaining.—There is nothing in the Act to prevent a relation or friend of a lunatic, as to whom an order might be made on petition, from keeping him under his own care. See, however, notes to sec. 4, subs. (1), *ante*.

A justice having jurisdiction.—See notes to secs. 13-18, *ante*.

Visitors.—As to visiting committees of asylums, see sec. 169, *post*.

Asylum.—Definition of, sec. 341, *post*.

Satisfied.—See note to corresponding word in sec. 16, *sup.*

Sec. 23 (1), (2).

Reception Order by two Commissioners.

Commissioners may send pauper lunatic to an institution for lunatics.

23. (1) Any two or more Commissioners may visit a pauper lunatic or alleged lunatic not in an institution for lunatics, or workhouse, and may, if they think fit, call in a medical practitioner.

This subsection re-enacts sec. 32 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111).

Any two or more Commissioners.—One of the two or three must be a medical and one a legal Commissioner, see sec. 187, *post.* Definition of Commissioners, sec. 341, *post.* As to appointment and duties of, see secs. 150-162, *post.*

Visit.—With or without notice.

Pauper.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.* As to visitation of paupers in, see sec. 201, *post.*

As to visitation of paupers not in, see sec. 202, *post.*

Workhouse.—Definition of, sec. 341, *post.* As to visitation of workhouses, see sec. 203, *post.*

Call in.—See note to corresponding words in sec. 16, *ante.*

Medical practitioner.—Definition of, sec. 341, *post.*

The remuneration of a medical practitioner so called in would be included under expenses in relation to pauper lunatics, sec. 298, *post.*

(2) If the medical practitioner signs a medical certificate with regard to the lunatic, and the Commissioners are satisfied that the pauper is a lunatic, and a proper person to be detained, they may by order direct the lunatic to be received in an institution for lunatics, and the relieving officer of the district or any constable who may by them be required so to do shall forthwith convey the lunatic to such institution.

Form 8.

Medical practitioner.—See note to subs. (1).

A medical certificate.—Form of, Form 8, Sched. ii., *post.* As to use of such forms, sec. 339, *post.*

As to protection of persons signing, sec. 330, *post.*

Wilful misstatement of material fact in, a misdemeanour, sec. 317, subs. (2), *post.*

Lunatic.—Definition of, sec. 341, *post.* A pauper lunatic not in

Sec. 23 (2).

an institution for lunatics or workhouse is here referred to. See subs. (1).

Commissioners.—Definition of, sec. 341, *post.*

Satisfied.—See notes to corresponding word in sec. 20, *ante.*

Pauper.—Definition of, sec. 341, *post.*

Proper person.—See notes to corresponding words in sec. 16, *ante.*

Order.—No form is given in Sched. ii., *post.*

Wilful misstatement of material fact in, is a misdemeanour, sec. 317, subs. (1), *post.*

Protection of persons signing, sec. 330, *post.*

Direct.—The order should contain, but is also (see sec. 35, subs. (1), *post*) in itself, an authority for the removal and reception of the lunatic.

An institution for lunatics.—Definition of, sec. 341, *post.*

The relieving officer of the district.—As to where there are two or more relieving officers, see Act of 1891, sec. 2, subs. (2), *ante* p. 120. The Commissioners may require either the relieving officer or the constable to convey the lunatic to the institution.

Convey.—The duty may be delegated to some other person or persons, see sec. 2, subs. (1) of the Act of 1891, *ante* p. 125.

As to payment of expenses, see sec. 298, *post.*

Lunatics in Workhouses.

Lunatics in workhouses. (Act of 1889, s. 21, subs. (1).)

24. (1) Except in the cases mentioned in this Act, no person shall be allowed to remain in a workhouse as a lunatic unless the medical officer of the workhouse certifies in writing—

Form 10.

(*a*) that such person is a lunatic, with the grounds for the opinion; and

(*b*) that he is a proper person to be allowed to remain in a workhouse as a lunatic; and

(*c*) that the accommodation in the workhouse is sufficient for his proper care and treatment, separate from the inmates of the workhouse not lunatics, unless the medical officer certifies that the lunatic's condition is such that it is not necessary for the convenience of the lunatic or of the other inmates that he should be kept separate.

4. (1) Every pauper suffering from mental disease in a workhouse at the commencement of the principal Act, as to whom a report had before the commencement of the principal Act been made under section twenty-two of the Poor Law Amendment Act 1867, may be detained in the workhouse against his will without an order under section twenty-four of the principal Act. Sec. 24 (1).

Act of 1891, s. 4. Amendments of 53 & 54 Vict. c. 5, section 24. 30 & 31 Vict. c. 106.

(2) The medical superintendent of an asylum provided under the Metropolitan Poor Act 1867, shall not be required in any certificate under subsection one of section twenty-four of the principal Act, or under this Act, to certify to the effect in subclause (*c*) of that subsection mentioned, and upon the transfer from a workhouse to an asylum provided under the Metropolitan Poor Act 1867, of a lunatic, with regard to whom a certificate or order under the said section twenty-four made while he was in the workhouse is in force, no further certificate or order shall be required for the detention of the lunatic in the asylum. 30 Vict. c. 6.

Subs. (1) of sec. 24 re-enacts sec. 21, subs. (1) of the Lunacy Act 1889.

Lunatics in workhouses.—The present section, as amended by sec. 4 of the Act of 1891, is so involved that it may be convenient to trace its origin. Origin of present section.

The Poor Law Amendment Act of 1834 (4 & 5 Will. IV. c. 76), sec. 45, provided that no lunatic, insane person, or dangerous idiot should be detained in any workhouse—not being a place licensed for the reception of the insane or a county lunatic asylum—for more than fourteen days. Poor Law Act of 1834.

The Lunacy Acts Amendment Act of 1862 (25 & 26 Vict. c. 111), sec. 20, without referring to the Act of 1834, qualified the provision above mentioned by the words which reappear in substance in subs. (1), *sup.*, "unless in the opinion given in writing of the medical officer of the union or parish to which the workhouse belongs, such person is a proper person to be kept in a workhouse, nor unless the accommodation in the workhouse is sufficient for his reception," and enacted that in the event of any person being detained in contravention of its provisions, it should be the duty of the medical officer to see to his transfer to an asylum (see subs. (6) of the present section, *post*). Lunacy Acts Amendment Act of 1862.

The next statute to be noticed is the Poor Law Amendment Act of 1867 (30 & 31 Vict. c. 106). Sec. 22 of that statute provided that where there was in any workhouse a poor person suffering from mental disease or from bodily disease of an infectious or contagious character, and the medical officer certified that he was not in a proper state to leave the workhouse without danger to himself or others, the Poor Law Amendment Act of 1867.

Sec. 24 (1).

guardians might empower the master to detain him till the medical officer certified that his discharge might take place. To this a proviso was added that the section was not to prevent the removal of a lunatic to an asylum, registered hospital, or licensed house, when such removal was otherwise required by law, nor the removal of any poor person after the parent or next-of-kin of such person had given to the guardians a satisfactory undertaking for his maintenance, etc., while the malady lasted; and this provision was to apply to every district school and district asylum, and to the managers, board of management, medical officer, superintendent, or master thereof respectively.

Lunacy Act of 1889.

The Lunacy Act of 1889 (of sec. 21 of which the present section is a re-enactment) repealed sec. 20 of the Lunacy Acts Amendment Act of 1862, but left sec. 45 of the Poor Law Act of 1834 and sec. 22 of the Poor Law Amendment Act 1867 unaffected. The

Act of 1890.

Act of 1890 repealed the former, and, except as regards persons suffering from *delirium tremens*, or from bodily disease of a contagious or infectious character, the latter.

Act of 1891.

The Act of 1891 contains the following provisions on this subject: (1) That a pauper suffering from mental disease, as to whom an order had been made under sec. 22 of the Poor Law Amendment Act 1867 before the commencement of the Act of 1890 (1st May 1890), may be detained under that section (in spite of its repeal as to such persons) without an order under sec. 24 of the Act of 1890; (2) That in the case of asylums under the Metropolitan Poor Act 1867 (30 Vict. c. 6), the medical officer shall not be required to certify as to sufficiency of accommodation (sec. 1, sub. (*c*), *sup.*), and on the transfer of a lunatic from a workhouse to such an asylum, with regard to whom a certificate or order under this section is in force, no further certificate or order shall be required for his detention.

Exceptional cases.

Except in the cases, etc.—Viz. (1) the urgent cases referred to in sections 20 and 21, *ante*; (2) the case of a pauper suffering from mental disease as to whom before the commencement of this Act (1st May 1890) an order has been made under sec. 22 of the Poor Law Amendment Act 1867 (*v. sup.* and sec. 4, subs. (1) of the Act of 1891, *sup.* p. 149); (3) the case of a lunatic detained in an asylum provided under the Metropolitan Poor Act 1867, where no certificate as to sufficiency of accommodation is required (Act of 1891, sec. 4, subs. (2), *sup.* p. 149); and (4) the case of a lunatic transferred to such an asylum from a workhouse while a certificate or order made in regard to him there is in force. Here no further certificate or order is required for his detention (*ib.*). (2), (3), and (4) arise under the Act of 1891, but that statute is to be construed as one with the Act of 1890 (see sec. 1 of the Act of 1891).

Allowed to remain.—The detention of a lunatic without statutory authority may be justified at common law by showing that it was necessary for his safety or that of others, see *ante* p. 86.

Meaning of "lunatic."

Lunatic.—Definition of, sec. 341, *post.* The section applies to

every lunatic in a workhouse, by whatever means he was brought there. Sec. 24 (1), (2)

Workhouse.—Definition of, sec. 341, *post.* "Workhouse" includes an asylum provided under the Metropolitan Poor Act 1867.

Medical officer.—Definition of, sec. 341, *post.*

Certificates—

Form of certificate, Form 10, Sched. ii., *post.*

Use of forms, sec. 339, *post.*

Protection to persons signing, sec. 330, *post.*

Wilful misstatement of material fact in, a misdemeanour, sec. 317, subs. (2), *post.*

Grounds.—As a certificate under this section is not one upon which a reception order is founded (see sec. 28, subs. (2), *post*), it is apparently unnecessary that the certifying officer should distinguish facts observed by himself from facts communicated by others (*ib.*), and see Form 10, Sched. ii., *post.* The reason for the omission of any direction on this point is obvious. The medical officer's opinion will in most cases be founded on personal observation. "Grounds."

Proper person, etc.—It is conceived that the medical officer may have regard only to the medical aspects of the case. The question whether the lunatic ought to be detained in the workhouse or sent to an asylum seems to be one with which the justice (see subs. (3), *inf.*) ought more properly to deal. "Proper person."

The accommodation, etc. — The medical superintendent of an asylum, provided under the Metropolitan Poor Act 1867, is not required to certify as to this, sec. 4, subs. (2) of the Act of 1891, *sup.* p. 149.

Pauper.—Definition of, sec. 341, *post.*

Mental disease.—The Act of 1890 repealed sec. 22 of the Poor Law Amendment Act 1867, except as regards persons suffering from *delirium tremens*, or from bodily disease of a contagious or infectious character (*v. sup.* and Sched. v., *post*). The present subsection excepts from the operation of sec. 24 of the Act of 1890 persons suffering from mental disease, as to whom before the commencement of the Act of 1890 (viz. 1st May 1890) an order under sec. 22 of the Act of 1867 had been made. In the cases which the present subsection contemplates, sec. 22 of the Act of 1867 (*v. sup.* p. 149) will apply. "Mental disease."

Workhouse.—Definition of, sec. 341, *post.*

Detained . . . principal Act.—See preceding note, and note to "allowed to remain" in subs. (1), sec. 24 of the Act of 1890, *sup.* See general note, *sup.* p. 149.

Medical superintendent. — Included in the definition of "medical practitioner," sec. 341, *post.* See general note, *sup.* p. 149.

Asylum provided, etc.—Included in the definition of "workhouse," sec. 341, *post.* See general note, *sup.* p. 149.

(2) A certificate under this section shall be sufficient authority for detaining the lunatic therein named against (Act of 1889, s. 21, subs. (2).)

Sec. 24 (2), (3).

his will in the workhouse for fourteen days from its date.

This subsection re-enacts subs. (2), sec. 21 of the Lunacy Act 1889.

Sufficient authority.—As to protection of persons putting this Act in force, see sec. 330, *post.*

A lunatic may be detained without any statutory authority, if such detention is necessary for his safety or that of others, see *ante* p. 86.

Meaning of "fourteen days."

For fourteen days from its date, i.e. from, but excluding, the day of its date. "Days" means days in all;[1] and *semble*, after that time either there must be a justice's order under subs. (3), *inf.*, or the medical officer must proceed to take action under subs. (6), *inf.* A lunatic may be detained for three days in a workhouse in urgent cases, under sec. 20, *ante*; and for fourteen days under a temporary order by a justice, under sec. 21, *ante.*

(Act of 1889, s. 21, subs. (3).)

(3) No lunatic shall be detained against his will or allowed to remain in a workhouse for more than fourteen days from the date of a certificate under this section without an order under the hand of a justice having jurisdiction in the place where the workhouse is situate.

Form 11.

This subsection re-enacts subs. (3) of sec. 21 of the Lunacy Act 1889.

Exception from sub-section.

No lunatic. — Definition of lunatic, sec. 341, *post.* Except in the case of a pauper suffering from mental disease as to whom before the commencement of this Act (1st May 1890) an order has been made under sec. 22 of the Poor Law Amendment Act 1867. Here the procedure under the Act of 1867 was still preserved from repeal. This exception, however, has now become of comparatively little importance. Where a lunatic is removed to a workhouse under sec. 20, *ante*, which deals with urgent cases, the subsequent procedure is governed by secs. 13-15, *ante.*

Removal to place of settlement of lunatic in workhouse.

In the case of a lunatic detained in a workhouse who is found to be settled in some other union, a common order of justices is the only procedure applicable for his removal to the place of settlement. Secs. 288-9, *post*, do not apply to lunatics detained in workhouses.

Workhouse.—Definition of, sec. 341, *post.*

More than fourteen days.—See notes to subs. (2), *sup.*

Order.—Form of, Form 11, Sched. ii., *post.* As to use of such form, sec. 339, *post.*

It will be open to the justice on the application under this subsection to make an order under sec. 18, *ante*, for the removal of the lunatic to an asylum if he think that the case is not a workhouse one, and has jurisdiction otherwise.

[1] See note to "days" in sec. 21, subs. (3), *ante.*

It is not necessary that the justice should personally see or examine the lunatic before making an order under this subsection.

Personal examination by justice unnecessary.

Wilful misstatement of material fact in order a misdemeanour, sec. 317, subs. (1), *post*.

Protection to persons making and enforcing, sec. 330, *post*.

If such an order is not forthcoming, the medical officer must move under subs. (6), *inf*.

Procedure where no order.

As to person on whose application order may be made, see subs. (4), *inf*.

The medical certificates on which the order is founded are to be attached to it, sec. 5 of the Act of 1891, *post* p. 155.

Justice.—Definition of, sec. 341, *post*.

Situate.—In cases where a city workhouse is situated in a county outside the jurisdiction of the city, the order must be made by a county justice. There is no provision here as in sec. 262, *post*, making the workhouse constructively within the city for the purposes of jurisdiction under the Act.

Where city workhouse situated in county.

(4) The order in the last preceding subsection mentioned may be made upon the application of a relieving officer of the union to which the workhouse belongs, supported by a medical certificate under the hand of a medical practitioner, not being an officer of the workhouse, and by the certificate under the hand of the medical officer of the workhouse hereinbefore mentioned.

(Act of 1889, s. 21, subs. (4).)

Forms 8, 10.

This subsection re-enacts subs. (4) of sec. 21 of the Lunacy Act 1889.

The order.—See notes to preceding subsection.

May be made.—There seems to be no reason why the medical officer or the master of the workhouse should not make the application, if it is supported by the requisite certificates. But it may be convenient to call in the relieving officer of the union.

Order, by whom may be made.

The application.—No form of application is prescribed. It may be written or oral, so long as it is supported by the requisite medical certificates. The application must be made to a justice having jurisdiction in the place where the workhouse is situate. It is for the applicant for the order to obtain the necessary certificates, not for the justice to call in a medical practitioner, as under sec. 16, *ante*.

Application.

A relieving officer.—As to where there are two or more relieving officers in a union, and the guardians direct one of them to discharge throughout the union the duties of a relieving officer in respect of lunatics, see Act of 1891, sec. 2, subs. (2), *ante* p. 120.

Union.—Definition of, sec. 341, *post*.

Sec. 24 (4)-(6).

Officer.—*Semble*, that a deputy of the medical officer could sign the necessary certificates. He is not an officer of the workhouse.[1]

Query whether deputy medical officer can certify.

Workhouse.—Definition of, sec. 341, *post.*

A medical certificate.—Form of, Form 8, Sched. ii., *post.*

As to use of forms, sec. 339, *post.*

Protection of persons signing, sec. 330, *post.*

Wilful misstatement of material fact in, a misdemeanour, sec. 317, subs. (2), *post.*

A medical practitioner.—Definition of, sec. 341, *post.* Any medical practitioner other than an officer of the workhouse may sign. See last preceding note as to protection of, etc.

Remuneration of, subs. (3), *inf.*

The certificate, etc.—See subs. (1), *ante.* The certificates must be attached to this order, Act of 1891, sec. 5, *post* p. 155.

(Act of 1889, s. 21, subs. (5).)

(5) The guardians of the union to which the workhouse belongs shall pay such reasonable remuneration as they think fit to the medical practitioner who, not being an officer of the workhouse, examines a person for the purpose of a certificate under this section.

This subsection re-enacts subs. (5) of sec. 21 of the Lunacy Act 1889.

Guardians.—Definition of, sec. 341, *post.*

Union.—Definition of, sec. 341, *post.*

Workhouse.—Definition of, sec. 341, *post.*

Medical practitioner.—Definition of, sec. 341, *post.*

Not being an officer.—There is a double reason for this exclusion. In the first place, any examining duty done by an officer of the workhouse is presumably covered by his salary. In the second place, as he is already engaged at the workhouse, such duty involves no material addition to his labours.

Query whether guardians may contract to pay medical officer.

It is conceived, however, that the guardians may legally contract to pay fees to the medical officer for examinations under subs. (1), and that the medical officer can claim remuneration under such a contract.

(Act of 1889, s. 21, subs. (6).)

(6) If, in the case of a lunatic being in a workhouse, the medical officer thereof does not sign such certificate as in subsection one of this section mentioned, or if at or before the expiration of fourteen days from the date of the certificate an order is not made under the hand of a justice

[1] Cp. 55 J.P. 236; and cp. opinion of Sir Henry James, A.-G., and Sir Farrer Herschell, S.-G., 14th March 1883, 38th Rep. Commissioners in Lunacy, Appx. P.

for the detention of the lunatic in the workhouse, or, if after such an order has been made, the lunatic ceases to be a proper person to be detained in a workhouse, the medical officer of the workhouse shall forthwith give notice in writing to a relieving officer of the union to which the workhouse belongs *that a pauper in the workhouse is a lunatic and a proper person to be sent to an asylum*, and thereupon the like proceedings shall be taken by the relieving officer and all other persons for the purpose of removing the lunatic to an asylum, and within the same time, as by this Act provided in the case of a pauper deemed to be a lunatic and a proper person to be sent to an asylum, and, pending such proceedings, the lunatic may be detained in the workhouse.

Sec. 24 (6).

Repealed by Act of 1891, Schedule.

5. There shall be attached to every order made by a justice under section twenty-four of the principal Act the medical certificates on which such order is founded.

Act of 1891, s. 5. Medical certificates.

Subs. (6) of sec. 24 re-enacts in substance subs. (6) of sec. 21 of the Lunacy Act of 1889.

See notes to preceding subsections.

If, in the case . . . subsection one.—See *sup.* p. 148, and notes thereto.

At or before . . . certificate.—The word *at* refers to a point of time rather than a period.[1] Here it signifies *on*. The subsection applies unless when the fourteen days expire an order under subs. (4), *sup.*, has not been made. "Days" means in all, excluding the date of the certificate, see note to sec. 21, subs. (3), *ante*.

"Days."

Justice.—Definition of, sec. 341, *post*.

The like proceedings.—See secs. 14, 16, and 19, *ante*.

An order.—See subs. (4), *sup*.

A proper person.—See subs. (1), *ante*.

May be detained.—Apart from statutory authority, the detention of a lunatic is justifiable at common law if necessary for his safety or that of others, see *ante* p. 86.

The medical certificates.—See note to corresponding words in subs. (4), *ante*. Section 5 of the Act of 1891 was added to the Bill on the motion of Mr. Rowntree. It facilitates the keeping of the orders and certificates together for inspection by the Commissioners in Lunacy.

[1] Cp. per Chitty, J., in *re Railway Sleepers Supply Co.*, 1885, 29 Ch.D., at p. 206.

Sec. 24 (7), (8).

(Act of 1889, s. 21, subs. (10).) 30 & 31 Vict. c. 6.

(7) In the case of a lunatic in an asylum provided for reception and relief of the insane under the Metropolitan Poor Act 1867, notices to be given to and proceedings to be taken by a relieving officer shall be given to and taken by one of the officers of the asylum to be nominated for the purpose by the managers of the asylum district.

This subsection re-enacts subs. (10) of sec. 21 of the Lunacy Act 1889.

Lunatic.—Definition of, sec. 341, *post.*

Asylum provided . . . Metropolitan Poor Act 1867.—See notes to subs. (1), *sup.* Definition of "asylum," sec. 341, *post.*

(Act of 1889, s. 21, subs. (12).)

25 & 26 Vict. c. 111.

(8) As regards every pauper in a workhouse at the date of the commencement of this Act, as to whom a certificate has been signed under section twenty of the Lunacy Acts Amendment Act 1862, no certificate or order of a justice under this section shall be required.

This subsection re-enacts subs. (12) of sec. 21 of the Lunacy Act 1889.

Pauper.—Definition of, sec. 341, *post.*

Workhouse.—Definition of, sec. 341, *post.*

Date, i.e. 1st May 1890.

Section twenty . . . 1862.—See notes to subs. (1), *ante.*

No certificate.—See subs. (1), *ante.*

Or order.—See subs. (3), *ante.*

Justice.—Definition of, sec. 341, *post.*

Power to send discharged pauper not recovered to a workhouse. (Act of 1889, s. 22.)

25. Where a pauper lunatic is discharged from an institution for lunatics, and the medical officer of the institution is of opinion that the lunatic has not recovered and is a proper person to be kept in a workhouse as a lunatic, the medical officer shall certify such opinion, and the lunatic may thereupon be received and detained against his will in a workhouse without further order if the medical officer of the workhouse certifies in writing that the accommodation in the workhouse is sufficient for the lunatic's proper care and treatment, separate from the inmates of the workhouse not lunatics, or that the lunatic's

condition is such that it is not necessary for the convenience of the lunatic, or of the other inmates, that he should be kept separate. Sec. 25.

This subsection re-enacts sec. 22 of the Lunacy Act 1889.

Pauper.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Discharged.—As to discharge of pauper lunatics from institutions for lunatics, see secs. 73, 75-79, *post*, and see order of Local Government Board, 30th Jan. 1891.[1]

Institution for lunatics.—Definition of, sec. 341, *post*; and see also sec. 27, *post.*

Medical officer.—Definition of, sec. 341, *post.*

A proper person.—See notes to sec. 24, subs. (6), *sup.*

Workhouse.—Definition of, sec. 341, *post.*

Shall certify.—For form of certificate adapt Form 10, Sched. ii., *post.* Under the Rules of the Commissioners in Lunacy of 29th March 1895, rule 23 (4), *post*, a copy of the certificate must accompany the notice of discharge to be sent to the Commissioners.

The accommodation, etc. . . . separate.—See notes to sec. 24, subs. (1) (*c*), "the accommodation, etc.," *ante.*

Chronic lunatics may be received in workhouses in certain cases.

26. (1) The visitors of any asylum may, with the consent of the Local Government Board and the Commissioners, and subject to such regulations as they respectively prescribe, make arrangements with the guardians of any union for the reception into the workhouse of any chronic lunatics, not being dangerous, who are in the asylum and have been selected and certified by the manager of the asylum as proper to be removed to the workhouse.

This subsection is based on sec. 8 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111); sec. 2 of 26 & 27 Vict. c. 110; and sec. 43 of 31 & 32 Vict. c. 122.

Visitors.—See definition of "visiting committee," sec. 341, *post.* As to visitation of asylums, see sec. 169, *post.*

Asylum.—See definition of, sec. 341, *post.*

The Commissioners.—See definition of, sec. 341, *post*; and as to appointment and duties of, secs. 150-162, *post.*

Guardians.—Definition of, sec. 341, *post.*

Union.—Definition of, sec. 341, *post.*

Workhouse.—Definition of, sec. 341, *post.*

Any chronic lunatics, whether chargeable or not to the parish or union into the workhouse of which they are to be received (see

[1] St. R. and O. 1891, 461.

Sec. 26 (1), (2).

26 & 27 Vict. c. 110, sec. 2). The object of the subsection is to enable visitors, by the removal of chronic patients, to make provision for the removal into asylums of all recent and probably curable cases. The application must originate with visitors. No application received directly from a Board of Guardians can be entertained (*Minute*, 25th November 1863, 18th Rep. Commissioners in Lunacy, 74).

Manager.—Definition of, sec. 341, *post.*

Proper.—See note to sec. 24, subs. (1) (*b*), *ante.*

(2) Every lunatic received in a workhouse under this section shall, while he remains there, continue a patient on the books of the asylum for the purposes of this Act so far as it relates to lunatics removed to asylums.

This subsection is based on sec. 43 of 31 & 32 Vict. c. 122.

See notes to subs. (1), *sup.*

Lunatic.—Chronic lunatics are here referred to, see subs. (1), *sup.*

The books.—See the Commissioners' Rules 1895, *post.*

The purposes . . . asylums, i.e. the removal of a lunatic to a workhouse under this section is not to affect his subsequent treatment (secs. 39-53, *post*), removal (secs. 58 *et seq.*, *post*), discharge (secs. 72 *et seq.*, *post*), or chargeability (secs. 286 *et seq.*, *post*), or the rights of the guardians in regard to his property (secs. 299, 300, *post*).

Institutions in which Lunatics may be received.

Institutions to which lunatics may be removed.

27. (1) Subject to the restrictions in this section mentioned, every summary reception order, and every reception order made by two or more Commissioners, may authorise the reception of the lunatic named in the order not only into an asylum of the county or borough in which the place from which the lunatic is sent is situate, but also into any other institution for lunatics.

This subsection is based on secs. 72 and 78 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97); and sec. 33 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111).

Subject to the restrictions.—See subss. (2)-(4), *inf.*

Summary reception order.—See secs. 13-22, *ante.* Forms 12 and 15, Sched. ii., *post.*

Reception order . . . Commissioners.—See sec. 23, *ante.*

Lunatic.—Definition of, sec. 341, *post.*

Asylum.—Definition of, sec. 341, *post.*

County.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post*. This term includes a hospital or a licensed house.

Sec. 27 (1)-(4).

(2) A lunatic shall not under any such order be sent elsewhere than to an asylum of the county or borough in which the place from which he is sent is situate, unless there is no such asylum, or there is a deficiency of room, or there are some special circumstances by reason whereof the lunatic cannot conveniently be taken to such asylum, and the deficiency of room or special circumstances shall be stated in the order.

(Restrictions on institutions to which lunatics may be removed.)

See notes to preceding subsection.

Deficiency of room.—See sec. 275, subs. (4), *post*, as to power of visiting committee to make regulations affecting room, etc. As to duty of superintendent where asylum is full, see note to sec. 238, *post*.

Special circumstances.—See sec. 275, subs. (5), *post*, as to exclusion of patients afflicted with disease.

As to removal of lunatic from workhouse where union is situate in more than one county, see sec. 68, *post*; see also Act of 1891, sec. 6, *post* p. 160.

(3) A pauper lunatic shall not be received under an order into any asylum other than an asylum belonging wholly or in part to the county or borough in which the place from which the lunatic is sent or the parish in which he is adjudged to be settled is situate, unless there is a subsisting contract for the reception of lunatics of such county or borough therein, or such borough otherwise contributes to the asylum into which the pauper is to be received, except the order is endorsed by a visitor of that asylum.

(16 & 17 Vict. c. 97, sec. 78.)

This subsection re-enacts part of sec. 78 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See notes to subs. (1), *sup.*

Adjudged to be settled.—See sec. 289, *post*.

Subsisting contract.—See secs. 243 and 269, *post*.

Contributes.—See secs. 244-246, *post*.

Visitor.—As to visitors of asylums, see sec. 169, *post*.

(4) The manager of a hospital or licensed house shall

Sec. 27 (4).

not be bound to receive any lunatic under any such order except in pursuance of a subsisting contract.

This subsection re-enacts in substance the last clause of sec. 78 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See notes to subss. (1)-(3), *sup.*

Manager.—Definition of, sec. 341, *post.*

Hospital.—Definition of, sec. 341, *post.*

Licensed house.—See sec. 177, *post.*

Subsisting contract.—See secs. 243 and 269, *post.*

Act of 1891, s. 6. Workhouse situate in county not including union.

6. Where a workhouse is situate in a county which does not include the union to which the workhouse belongs, a summary reception order made by a justice of the county in which the workhouse is situate may order a lunatic in the workhouse to be received in any asylum, in which pauper lunatics chargeable to the union, to which the workhouse belongs, may legally be received.

Workhouse.—Definition of, sec. 341, *post.*

County.—Definition of, sec. 341, *post.*

Union.—Definition of, sec. 341, *post.*

Summary reception order.—See secs. 13-22, *ante.*

Justice.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Asylum.—Definition of, sec. 341, *post.*

Pauper.—Definition of, sec. 341, *post.*

Chargeable.—As to chargeability, see sec. 280, *post.*

As to removal of lunatic from workhouse where union is situate in more than one county, see sec. 68, *post.* Under sec. 27 of the Act of 1890, where a workhouse and its union were not in the same county, lunatics were sent to the asylum of the county in which the workhouse was situate. The present section remedies this state of things.

Act of 1891, s. 19, subs. (1). Removal of lunatic becoming a pauper.

19. (1) Where a lunatic in a hospital or licensed house becomes a pauper, the manager of the hospital or house may, after having given notice to the authority liable for the maintenance of the lunatic of his intention so to do, apply to a justice of the peace having jurisdiction in the place where the hospital or house is situate for an order for the removal of the lunatic, and such justice may, if he thinks fit, make an order for the removal of the lunatic to an institution for lunatics to which pauper lunatics for whose maintenance the authority is liable may legally be sent and for the reception of the lunatic therein, and such institution shall be named in the order, and the manager of the hospital or house shall forthwith cause the lunatic to be removed to the institution named in the

order. In the case of such removal the original reception order shall remain in force, and shall authorise the classification of the lunatic as a pauper lunatic in the institution to which he is removed.

Sec. 27 (4).

Object of section.

This section was intended to remove difficulties which had arisen in regard to the removal of private patients, in hospitals and licensed houses, becoming paupers.

Lunatic.—Definition of, sec. 341, *post.*

Hospital.—Definition of, sec. 341, *post.*

Licensed house.—As to, see sec. 177, *post.*

Pauper.—Definition of, sec. 341, *post.*

Manager.—Definition of, sec. 341, *post.*

The authority liable.—As to authority liable for maintenance of lunatics, see secs. 286 *et seq.*, *post.*

When liability of guardians commences.

An order.—As to costs of obtaining, see subs. (2), *inf.* There is no provision in the section as to when the liability of the guardians commences. *Semble*, it would commence at the time when the lunatic becomes a pauper, the guardians being protected against the risk of undue delay on the part of the manager by the right in such cases to refuse to refund the extra charge for maintenance during the period of delay.[1]

Institution for lunatics.—Definition of, sec. 341, *post.*

To which . . . sent.—As to these, see sec. 27, subs. (3), *ante.*

Forthwith cause.—See note to "order," *sup.*, as to check on undue delay.

The original reception order.—See sec. 4, *ante.*

Act of 1891, s. 19, subs. (2).

(2) The costs of obtaining an order under this section and of the removal of the lunatic shall be repaid to the manager who obtains the order by the authority liable for the maintenance of the lunatic, and any justice having jurisdiction in the place where the hospital or house from which the lunatic was removed is situate shall have power to fix the amount of such costs and to order such authority to repay the same. The provisions of section three hundred and fourteen of the principal Act shall apply to every such order for the repayment of costs.

See notes to subs. (1), *sup.*

Section three hundred and fourteen.—This section deals with recovery of expenses, see *post.*

Requirements of Reception Orders and Medical Certificates.

Medical certificates. (Act of 1889, s. 17, subs. (1).)

28. (1) Every medical certificate under this Act shall be made and signed by a medical practitioner.

[1] Cp. 58 J.P. 172.

Sec. 28 (1)-(3).

This subsection re-enacts subs. (1) of sec. 17 of the Lunacy Act 1889.

Medical certificate.—Form of, Form 8, Sched. ii., *post.*

Protection to persons signing, sec. 330, *post.*

Who may sign, sec. 30, *post.*

Wilful misstatement of material fact in, a misdemeanour, sec. 317, subs. (2), *post.*

"Medical practitioner," definition of.

Medical practitioner.—"Medical practitioner" means a medical practitioner (1) duly registered under the Medical Act 1858 (21 & 22 Vict. c. 90), and the Acts amending the same, and the Medical Act 1886 (49 & 50 Vict. c. 48); and (2), *semble*, residing within the jurisdiction[1] (sec. 341, *post*; and see notes *ad loc. cit.*).

(16 & 17 Vict. c. 96, sec. 10; 16 & 17 Vict. c. 97, sec. 75.)

(2) Every medical certificate upon which a reception order is founded shall state the facts upon which the certifying medical practitioner has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts communicated by others; and a reception order shall not be made upon a certificate founded only upon facts communicated by others.

This subsection is based on sec. 10 of the Lunacy Act 1853 (16 & 17 Vict. c. 96); and sec. 75 of the Lunacy Asylums Act 1853 (16 & 17 Vict. c. 97).

Upon which, etc.—This provision does not, therefore, apply to a certificate by a medical officer under sec. 24, *ante.*

Shall state . . . distinguishing.—See Form 8, Sched. ii., *post.*

As to use of these forms, see sec. 339, *post.*

Facts observed by himself.—At least as regards such facts the subsection is directory only; it will be sufficient if specific facts on which the opinion might be founded are stated, *e.g.* that the lunatic "labours under various delusions, and is dirty and indecent in the extreme."[2] But a statement that the patient "has a general suspicion of the motives of every one" will not do.[3]

Communicated by others.—The Christian names, surnames, and addresses of the informants should, if possible, be given (see Form 8, Sched. ii., *post*).

Reception order.—Definition of, sec. 341, *post.*

See notes to secs. 13-22.

(Act of 1889, s. 17, subs. (2).) Form 9.

(3) The medical certificate accompanying an urgency order shall contain a statement that it is expedient for the

[1] Cp. 20th Rep. Commissioners in Lunacy, p. 48.

[2] *In the matter of Shuttleworth*, 1846, 9 Q.B. 651.

[3] *Re Fell*, 1845, 3 D. & L. 373; and cp. E. A., 1862, 17th Rep. Commissioners in Lunacy, 39.

welfare of the alleged lunatic or for the public safety that he should be forthwith placed under care and treatment, with the reasons for such statement. Sec. 28 (3), 4).

This subsection re-enacts subs. (2) of sec. 17 of the Lunacy Act 1889.

Urgency order.—See sec. 11, and notes thereon, *ante.*

A statement.—See Form 9, Sched. ii., *post.*

(4) Every medical certificate made under and for the purposes of this Act shall be evidence of the facts therein appearing and of the judgment therein stated to have been formed by the certifying medical practitioners on such facts, as if the matters therein appearing had been verified on oath. (Act of 1889, s. 17, subs. (3).

This subsection re-enacts subs. (3) of sec. 17 of the Lunacy Act 1889.

Medical certificate.—See notes to subs. (1), *sup.*

Evidence of the facts . . . the judgment . . . on such facts . . . the matters.—But for the words "the judgment . . . on such facts" in this subsection, it might be arguable that it is unnecessary in legal proceedings to prove the date and the signature of the certificate, as these are "facts therein appearing," although the use of the word "facts" in subs. (2), *sup.*, does not point in this direction. But the qualifying clause, above referred to, puts the matter beyond all doubt. The term "matters" is merely used so as to include both "facts" and "judgment." Query whether date and signature of certificate must be proved.

29. (1) A reception order shall not be made unless the medical practitioner who signs the medical certificate, or where two certificates are required, each medical practitioner who signs a certificate, has personally examined the alleged lunatic in the case of an order upon petition not more than seven clear days before the date of the presentation of the petition, and in all other cases not more than seven clear days before the date of the order. Time and manner of medical examination of lunatic. (Act of 1889, s. 3, subs. (6).)

This subsection re-enacts subs. (6) of sec. 3 of the Lunacy Act 1889.

Reception order.—Definition of, sec. 341, *post.*

As to authority of, see sec. 35, subs. (1), *post.*

As to protection of persons making, sec. 330, *post.*

Sec. 29 (1), (2).

As to amendment of, sec. 34, *post*.

As to wilful misstatement in, sec. 317, subs. (1), *post*.

Medical practitioner.—Definition of, sec. 341, *post*.

Medical certificate.—See notes to sec. 28, subs. (1), *ante*.

Two certificates, where required.

Where two certificates are required, i.e. (1) in support of petitions, sec. 4, subss. (1) (2), *ante*, and (2) in the case of lunatics not under proper care and control, or cruelly treated, sec. 13, subs. (2), *ante*. In such cases each practitioner must examine the alleged lunatic separately from the other, subs. (2), *inf*.

Certificate must state place of examination.

Personally examined.—A statement that such an examination has been made is embodied in the Form of Medical Certificate in Sched. ii. (Form 8, Sched. ii., *post*). The place of examination, with the name of the street, the number or name of the house, or should there be no number or name, the Christian name and surname of the occupier, should be given. See Form 8, *post*.

Reg. v. *Pinder*.

In *Reg. v Pinder*[1]—a case decided under the Lunacy Act 1853 (16 & 17 Vict. c. 96)—a medical certificate for the detention of a lunatic in a house licensed for the reception of lunatics merely stated that the medical man had examined the alleged lunatic at Blackburn, and omitted to specify the street and number of the house, or other like particulars respecting the place where such examination was made. It was held by the Court of Queen's Bench that the certificate was bad, and that in such a case the alleged lunatic is entitled to be discharged on a writ of *habeas corpus*, on the ground that the detention is illegal, unless it be shown that it would be injurious to himself or others to set him at liberty. A defect of this kind could be cured under sec. 34, *post*, as indeed it could have been amended under sec. 11 of the Act of 1853. But after the expiry of the fourteen days within which such amendments must be effected, *Reg.* v. *Pinder* would, it is submitted, still hold good.

The judicial authority must, it seems, be satisfied that the personal examination required by the section has taken place. *Aliter* in the case of urgency orders, subs. (3), *inf*.

Orders upon petition.—As to such orders see sec. 4, *ante*.

In all other cases, e.g. summary reception orders, secs. 13-22, *ante*; reception orders by two or more Commissioners, sec. 23, *ante*.

"Seven clear days."

Seven clear days.—The days are to be reckoned exclusively of the date both of the examination and of the presentation of the petition.[2] The term "days" means days in all, Sundays, etc., included. "Date" signifies day of the date.[3] It will be noted that the last terminal is the date of the presentation of the petition, and not of its signature.

(Act of 1889, s. 3, subs. (6).)

(2) Where two medical certificates are required, a reception order shall not be made unless each medical

[1] 1855, 24 L. J. Q. B. 148; and cp. *R.* v. *Jones*, 1831, 2 B. & Ad. 611.

[2] Cp. *Liffin* v. *Pitcher*, 1842, 1 Dowl., N.S., 767, as to distinction between "days" and "clear days."

[3] *Pugh* v. *Duke of Leeds*, 1777, 2 Cowp. 714, 720.

practitioner signing a certificate has examined the alleged lunatic separately from the other. Sec. 29 (2), (3).

This subsection re-enacts subs. (6) of sec. 3 of the Lunacy Act 1889.

See notes to preceding subsection.

Where two medical certificates, etc.—See sec. 4, subss. (1), (2), and sec. 13, subs. (2), *ante.*

Separate examination by each medical practitioner.

Has examined.—The fact of such separate examination must appear in the certificate, see Form 8, Sched. ii., *post.* Moreover, it would seem that before making the order the judicial authority must satisfy himself that the personal examination has taken place, see note to subs. (1), *sup.* *Aliter* in the case of urgency orders, see subs. (3), *inf.*

(3) In the case of an urgency order, the lunatic shall not be received under the order unless it appears by the medical certificate accompanying the order that the certifying medical practitioner has personally examined the alleged lunatic not more than two clear days before his reception. (Act of 1889, s. 8, subs. (2).)

This subsection re-enacts subs. (2) of sec. 8 of the Lunacy Act 1889.

Urgency orders.

Urgency order.—See sec. 11, *ante.*

Lunatic.—Definition of, sec. 341, *post.*

Received under the order.—A lunatic may at common law be detained without any authority, if necessary for his protection or that of others, see *ante* p. 86.

It appears.—Here it is sufficient, if the medical certificate accompanying the order states that the prescribed personal examination has been held. *Aliter* in the case of reception orders, see subss. (1) and (2), *sup.*

Medical certificate.—See note to subs. (1), *sup.*

Medical practitioner.—See note to subs. (1), *sup.*

Personally examined.—See note to subs. (2), *sup.*

Two clear days, i.e. exclusive of the terminal days, see note to "seven clear days" in subs. (1), *sup.*

30. A medical certificate accompanying a petition for a reception order or accompanying an urgency order shall not be signed by the petitioner or person signing the urgency order, or by the husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, Persons disqualified for signing certificates. (Act of 1889, s. 15.)

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daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, partner or assistant of such petitioner or person.

Origin of section.

Under the Lunacy Act 1853 (16 & 17 Vict. c. 96), sec. 12, and the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), sec. 76, no physician, surgeon, or apothecary, who, or whose father, brother, son, partner, or assistant (1) was wholly or partly proprietor of, or a regular professional attendant in, a licensed house or hospital, or (2) signed the order for the reception of a patient, was competent to certify. The Act of 1889, sec. 15—of which the present section is a re-enactment—adopting a suggestion of the Commissioners of Lunacy in their 33rd Annual Report, p. 130, extends the prohibition of the admission of private patients on certificates signed by relatives of the person signing the order or receiving the patient to relatives by marriage. The case of professional interest is dealt with partly in the present section ("partner or assistant of such petitioner or person"), and partly in sec. 32, *post*. The object of this and of the three following sections is, of course, to make the certificates on which persons are committed to asylums as reliable as possible.

Object of section.

Medical certificate.—See notes to sec. 28, *ante*.

Petition for a reception order.—See notes to sec. 4, *ante*.

Urgency order.—See notes to sec. 11, *ante*.

Petitioner.—As to who may present petition, see sec. 5, subs. (1), *ante*.

Person signing.—As to who may sign, see sec. 11, subss. (2) and (3), *ante*.

Husband or wife.—The extension of the statutory disqualification for signing certificates to women is necessitated by 39 & 40 Vict. c. 41, which enabled bodies entitled under the Medical Acts to grant qualifications for registration, to grant such qualifications without distinction of sex.

Usual medical attendant to sign medical certificate in case of private patient, if possible. (Act of 1889, s. 3, subs. (5).)

31. One of the medical certificates accompanying a petition for a reception order shall, whenever practicable, be under the hand of the usual medical attendant, if any, of the alleged lunatic. If for any reason it is not practicable to obtain a certificate from such usual medical attendant, the reason shall be stated in writing by the petitioner to the judicial authority to whom the petition is presented, and such statement shall be deemed to be part of the petition.

This section re-enacts subs. (5) of sec. 3 of the Lunacy Act 1889.

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Petition for reception order.—See sec. 5, *ante*. Definition of reception order, sec. 341, *post*.

In writing.—No provision is made for the insertion of this statement in the petition (see Form 1, Sched. ii., *post*), and the last clause in this section shows that it is not intended to be so inserted.

The judicial authority.—Definition of, sec. 9, subs. (1), *ante*.

Shall be deemed, i.e. shall be taken conclusively, see notes to sec. 13, subs. (1), and sec. 14, subs. (1), *ante*.

Patients not to be received under certificates by interested persons. (Act of 1889, s. 16, subs. (1).)

32. (1) No person shall be received or detained as a lunatic in any institution for lunatics, or as a single patient, where any certificate accompanying the reception order has been signed by any of the following persons :—

(*a*) the manager of the institution or the person who is to have charge of the single patient :

(*b*) any person interested in the payments on account of the patient :

(*c*) any regular medical attendant in the institution :

(*d*) the husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, or the partner or assistant of any of the foregoing persons.

Object and origin of section.

This section disqualifies from signing certificates persons, and the relatives by blood or marriage, and the partners or assistants of persons, who have a professional interest in the institutions or houses into which the patients concerned are to be received. It completes the re-enactment and extension (in conformity with the suggestion of the Commissioners in Lunacy in their 33rd Annual Report, p. 130) of sec. 12 of the Lunacy Act 1853, and sec. 76 of the Lunatic Asylums Act 1853. See note to sec. 30, *ante*.

Received or detained.—The reception and detention of a lunatic without any statutory authority may at common law be justified, if necessary for his safety or that of others, see *ante* p. 86.

Lunatic.—Definition of, sec. 341, *post*.

Institution for lunatics.—Definition of, sec. 341, *post*.

Single patient.—As to reception of, see sec. 5, *ante*.

Any certificate.—Query whether these words include certificates under section 16, *ante*. Such certificates do not come within the object of the section (*sup.*), and its structure appears to be limited to private and single patients.

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Manager.—Definition of, sec. 341, *post.*

Interested.—Probably either a direct or an indirect interest would disqualify.[1]

Meaning of "interested."

The husband or wife.—See notes to sec. 30, *ante.*

(Act of 1889, s. 16, subs. (2).)

(2) Neither of the persons signing the medical certificates in support of a petition for a reception order shall be the father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, or the partner or assistant, of the other of them.

See notes to subs. (1), *sup.*

This subsection, which re-enacts subs. (2) of sec. 16 of the Lunacy Act 1889, might with advantage have been placed under section 30, *ante.*

(Act of 1889, s. 16, subs. (3).)

(3) No person shall be received as a lunatic in a hospital under an order made on the application of, or under a certificate signed by, a member of the managing committee of the hospital.

This subsection re-enacts subs. (3) of sec. 16 of the Lunacy Act 1889.

See notes to subs. (1), *sup.*

Lunatic.—Definition of, sec. 341, *post.*

Managing committee.—As to who are disqualified from being members of, see sec. 236, *post.*

Hospital.—Definition of, sec. 341, *post.*

Commissioners and visitors not to sign certificates.

33. A medical practitioner who is a Commissioner or a visitor shall not sign any certificate for the reception of a patient into a hospital or licensed house, unless he is directed to visit the patient by a judicial authority under

[1] But see sec. 165, *post*, as to the qualification for the office of Chancery Visitor, where the words "directly or indirectly" are used.

Thus it is conceived that a consulting physician to an institution for lunatics, who was paid a fixed salary only, and had no direct interest in the payments on account of any particular patient, or indeed of the patients as a class, would yet be disqualified under this section, inasmuch as the continuance of his salary would be to some extent dependent on the prosperity of the institution. This view is confirmed by the scope of this section, which clearly aims at the disqualification of all persons who may have any pecuniary, professional, or friendly bias in the matter.

this Act, or by the Lord Chancellor, or a Secretary of State, or a committee appointed by the judge in lunacy. Sec. 33.

This section re-enacts part of sec. 23 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Medical practitioner.—Definition of, sec. 341, *post.*

Commissioner.—Definition of, sec. 341, *post.*

Visitor.—As to visitors of hospitals and licensed houses, see secs. 177 and 191, *post.*

Query whether visitor can sign certificate for reception of lunatic into asylum.

Query whether there is anything to prevent a medical practitioner who is a visitor signing a certificate for the reception of a lunatic into an asylum as defined by the Act. See as to definition, sec. 341, *post.* The position of a medical Commissioner clearly precludes him from doing so.

Hospital.—Definition of, sec. 341, *post.*

Licensed house.—See sec. 177, *post.*

Unless he is directed.—As regards the Lord Chancellor and the Secretary of State, the reference is to sec. 204, *post.* There is no provision elsewhere in the statute as regards a judicial authority or a committee, but this section must be taken as conferring an express power.

Judicial authority.—Definition of, sec. 9, subs. (1), *ante.*

Lord Chancellor.—Definition of, Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 12.

Secretary of State.—Definition of, Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 10, subs. (3), viz. one of Her Majesty's principal Secretaries of State for the time being. In practice the Home Secretary.

A committee.—As to appointment of, see sec. 108, subs. (2), *post.*

Judge in lunacy.—Sec. 108, *post.*

Amendment of orders and certificates. (Act of 1889, s. 24, subs. (1).)

34. (1) If an order or certificate for the reception of a lunatic is, after such reception, found to be in any respect incorrect or defective, such order or certificate may, within fourteen days next after such reception, be amended by the person who signed the same. No amendment shall be allowed unless the same receives the sanction of the Commissioners, or of some one of them, and (in the case of a private patient) the consent of the judicial authority by whom the order for the reception of the lunatic may have been signed.

This subsection re-enacts subs. (1) of sec. 24 of the Act of 1889, which superseded sec. 11 of the Lunacy Act 1853 (16 & 17 Vict. c. 96) and sec. 87 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

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Material alteration with privity vitiates order or certificate. *Lowe* v. *Fox*.

Any *material* alteration in any order or certificate for the reception of a lunatic will, unless sanctioned in the manner indicated in this section, vitiate the entire document and preclude any person at least with whose knowledge or privity it was made from relying upon it. This point was considered by the House of Lords in *Lowe* v. *Fox*,[1] a case decided under the Lunacy Act 1853 (16 & 17 Vict. c. 96). There the plaintiff was taken to and detained in the defendant's asylum under an order signed by her husband, and containing a statement of questions and answers concerning her. To a question "When and where previously under care and treatment?" the answer was given "During the period of twenty years has been constantly under treatment." A few days after the plaintiff had been received into the asylum, this answer was altered by her husband[2] by the addition of the words "for hysteria by" several doctors whose names were given. No copy of the order as so altered was sent to the Commissioners, nor did they sanction the alteration. The House of Lords, affirming the decision of the Court of Appeal, held that as, in an earlier answer in the original order, it had been stated that the plaintiff "had for the last twenty years been subject to what is termed hysteria," the addition as to the last answer was a mere statement of something which had already appeared on the face of the instrument, that no rational person reading the words would entertain any doubt that the allegation intended to be made was that the lady had been under treatment by the doctors named for hysteria, and that therefore the alteration was not a material one, and did not invalidate the order or prevent the defendant from relying upon it. But their Lordships were careful to point out that their decision proceeded on the ground of immateriality alone. "I should entirely concur with the appellant," said Lord Halsbury,[3] L.C., "that in an order of this description, which as she truly says is the foundation upon which the person keeping the asylum is entitled to detain persons, and restrain them from the liberty to which they otherwise have a right, if a material part of it was altered so that the document no longer spoke the language which it did speak when it was originally received, and upon which the detention was authorised, that vitiated the document, and I think it would be a very calamitous view of the state of the law if any doubt could be entertained as to whether such a misuse of the authority given by the statute could be made with impunity. It is as well, I think, that it should be generally known and understood that any tampering with a document of that sort would impair its validity, and deprive *any person professing to act under it of any protection from it.* But in all the cases[4] . . . and in accordance with the principles upon which those

[1] 1887, 12 App. Cas. 206.

[2] It appears from the report of the case in the Court of Appeal (1885, 15 Q.B.D., at p. 668) that the alteration was made by the plaintiff's husband.

[3] 15 App. Cas., at p. 214.

[4] *Hall* v. *Semple*, 1862, 3 F. & F. 337, 350; *Reg.* v. *Pinder*, 1855, 24 L.J. Q.B. 148; *Pigot's case* (alteration of a deed), 12 Jac. I., 11 Rep. 26; *Master* v. *Miller*, 1791 (alteration of a bill of exchange), 4 T.R. 320, in error 1 Sm.L.C. 747; *Powell* v. *Divett*, 1812 (alteration of bought and sold notes), 15 East. 29; *Davidson* v. *Cooper*, 1844 (alteration of a guarantee), 13 M. & W. 343; *Crookewit* v. *Fletcher*,

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cases were decided, it may be clearly perceived that in each and every one of them materiality was an essential condition to make the instrument void."

Lord Herschell, while concurring in this judgment, did not do so without qualification. "I think it is important," he said,[1] "that it should be understood that the judgment which we are delivering rests upon the fact that the alteration was an alteration wholly immaterial, and that it is not intended to cast any doubt upon the proposition that the alteration of a document of this description in a material particular, *if made at all events with the privity and knowledge of the person who is relying upon it*, would make it invalid and would preclude him from legally relying upon it. I say that because certain expressions have been cited which would seem to indicate that in some cases at all events of a somewhat similar description, a document is invalidated even if the alteration be made against the will and in fraud of the person who has charge of it, and who has to rely upon it. For my own part, I desire entirely to reserve my opinion upon that point until it arises, because I do not feel at present prepared to say that in every case an alteration, which would invalidate the document when made with the privity and knowledge of the person having the custody of it and relying upon it, would invalidate it if made in fraud of him and against his will." Lord Watson concurred with the Lord Chancellor without delivering any judgment on the point now under consideration. Lords Fitzgerald and Macnaghten simply concurred.

Immaterial alteration, with or without privity, will not invalidate order, etc.

It will be observed that these decisions leave the law in a somewhat unsatisfactory state. It may be taken as established (1) that an *immaterial* alteration in an order or certificate, by whomsoever made, will not avoid the document or preclude any person, otherwise entitled to do so, from relying on it;[2] and (2) that a *material* alteration in any such document, if made by, or with the knowledge and privity of, the person otherwise entitled to rely upon it, will debar him from so doing. But several questions which are not exhaustively raised in Lord Herschell's judgment remain undecided. The order or certificate may have been altered (*a*) in fraud[3] (and against the will), or (*b*) *bonâ fide*, but without the knowledge or privity, of the person relying upon it. It is submitted that the motive of the person making the alteration—assuming him not to be an agent of the person relying on the order or certificate—is irrelevant to the question of the legal position of the latter, and that the true test is whether the alteration, though made without the knowledge or privity of the

1857 (alteration of a charter-party), 26 L.J. Ex. 153; *Suffell* v. *Bank of England*, 1882 (alteration of a Bank of England note), 9 Q.B.D. 555.

[1] 15 App. Cas., at p. 216.

[2] It was laid down in *Pigot's case* (*ubi sup.*), that if a deed be altered in a material point, even by a stranger, without the privity of the obligee, it is thereby avoided, and that if the alteration be made by the obligee, or with his privity, even in an immaterial part, it will also avoid the deed. But the Court of Queen's Bench declined to be bound by the latter part of this rule in *Aldous* v. *Cornwell*, 1868, L.R., 3 Q.B. 573.

[3] It is scarcely worth while for the present purpose to consider the case of *forcible* abstraction and alteration, which would of course be governed by the principles applicable to cases of duress.

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person seeking to protect himself by the order or certificate, was yet effected by means of his negligence. This view is borne out by the case of *Davidson* v. *Cooper*,[1] where to a count in *assumpsit* on a guarantee, the defendant pleaded that after it was given to the plaintiff it was altered in a material particular "by some person to the defendant unknown," without his consent, by affixing a seal, so as to make it appear to be the *deed* of the defendant; and upon a motion for judgment *non obstante veredicto*, the Court of Exchequer gave judgment for the defendant. That judgment was afterwards affirmed by the Court of Exchequer Chamber, the *ratio decidendi* being "that a party who has the custody of an instrument made for his benefit is bound to preserve it in its original state." "It is," said Lord Denman, "highly important for preserving the purity of legal instruments that this principle should be borne in mind and the rule adhered to. The party who may suffer has no right to complain, since there cannot be any alteration except through fraud or *laches* on his part." It may be that the latter part of this statement is too wide. One can conceive cases in which an order or certificate might be abstracted and altered without negligence on the part of the person relying on it. But the principle enunciated in *Davidson* v. *Cooper*[1] is a sound one, and it seems applicable to the case which we are considering. If these observations are well founded, it would appear that to the two propositions stated above should be added the following—any *material* alteration in an order or certificate which, although made without the knowledge or privity of the person relying upon it, has yet been effected by reason or in consequence of the negligence of that person, will preclude him from relying on such order or certificate.

Negligence.

What are material alterations?

There remains the question, what are *material* alterations? To this question it is of course impossible to give a complete answer. Each case must be decided upon its own merits, and the only general rule which can be laid down is that any alteration which makes the order or certificate substantially different is material, whether it affects the rights arising under the document or not.[2] In practice, no alteration as to which there can be any doubt should be made without the sanction of the Commissioners. A copy of the proposed amendment should be sent to the Commissioners' Office. In the case of a private patient, the consent of the judicial authority making the reception order must also be obtained.

An order or certificate, on which a person otherwise entitled to do so is precluded from relying as a direct defence by reason of a material alteration in its terms, may yet be admissible in evidence for collateral purposes, *e.g.* as evidence in mitigation of damages.[3]

[1] 1844, 13 M. & W. 343.

[2] Cp. *Suffell* v. *Bank of England*, 1882, 9 Q.B.D. 555. In this case the question was as to the materiality of an alteration in the number of a Bank of England note. The remarks of Jessel, M.R., *ubi sup.*, at pp. 562, 563, in regard to the considerations which limit the materiality in the case of an ordinary mercantile contract to the subject-matter of the contract itself, are very instructive. But the matter is not sufficiently germane to the present work to be pursued further here.

[3] Cp. *Suffell* v. *Bank of England*, *ubi sup.*, per Brett, L.J., at p. 568.

Sec. 34 (1), (2).

An order.—Definition of "reception order," sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

In any respect incorrect or defective.—These words are wide enough to cover any error or deficiency in an order or certificate.

Amendment by person signing.

Such order . . . same.—This subsection provides for amendment by the person signing the order or certificate. Subs. (2), *inf.*, provides for the initiative being taken by the Commissioners, but extends only to certificates. An amendment under this section when made and sanctioned relates back to the date of the order or certificate, subs. (3), *inf.* The amendment must be made by the signatory of the order or certificate.

No amendment can be made after fourteen days (which means all days, Sundays, etc., included) from the reception, and the power of the Commissioners to require amendments in certificates is subject (see subs. (2), *inf.*) to the condition that the certificate must be duly amended within fourteen days after the reception. The object of this narrow time-limit is of course to secure a close scrutiny of such documents at once by the persons signing them, by the persons receiving lunatics under them, and by the Commissioners; but it would seem to be desirable that some power of extension should be given to the Commissioners and the judicial authority.

A patient detained under an order or certificate, materially defective, and not amended in the prescribed manner within fourteen days after the reception, will be discharged if the Commissioners think fit (*v.* subs. (2), *inf.*, and secs. 75 and 76, *post*), and is also entitled to bring an action for false imprisonment against the person receiving and detaining him. But sec. 330, *post*, might be available to the defendant in such a case.

Shall be allowed.—In the Lunacy Act 1853, sec. 11, and the Lunatic Asylums Act 1853, sec. 87, the words "shall have any force or effect" are used. The words "shall be allowed" preclude the amendment from being made till the requisite sanction has been obtained.

Commissioners.—Definition of, sec. 341, *post.*

One of them.—An order for the discharge of a patient under subs. (2) must be made by at least two Commissioners.

Private patient.—Definition of sec. 341, *post.*

Judicial authority.—Definition of, sec. 9, subs. (1), *ante.*

(Amendment by Commissioners. Act of 1889, s. 24, subs. (2).)

(2) If the Commissioners deem any such certificate to be incorrect or defective, they may, by a direction in writing, addressed to the manager of the institution for lunatics, or to the person having the charge of a single patient, require the same to be amended by the person who signed the same, and if the same be not duly amended to their satisfaction within fourteen days next after the

Sec. 34 (2), (3).

reception of the patient, the Commissioners, or any two of them, may, if they think fit, make an order for the patient's discharge.

This subsection re-enacts subs. (2) of sec. 24 of the Lunacy Act 1889, superseding sec. 27 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111).

Commissioners.—Definition of, sec. 341, *post.* Here the initiative is given to the Commissioners.

Such certificate.—This means any certificate for the reception of a lunatic. This subsection applies only to certificates, *v.* subs. (1), *sup.*

Incorrect or defective.—See note to subs. (1), *sup.*

Manager.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Single patient.—As to reception of, see sec. 5, *ante.*

Amended . . . the same.—It is by the signatory of the certificate that the amendment must be made.

Duly amended.—Intimation that the amendment has been effected should be sent to the Commissioners.

The amendment, when once duly made, relates back to the date of the certificate.

Fourteen days next.—See note to words "such order" in preceding subsection. The term "days" means all days, Sundays, etc., included. The date of the reception is excluded.

Any two of them.—The consent of *one* Commissioner to a proposed amendment by the person signing the order or certificate is sufficient, subs. (1), *sup.* p. 169.

If they think fit.—The Commissioners ought to have power to extend the time for amendments.

Discharge.—The Commissioners have only power to order a patient's discharge under this subsection where they have made a requisition and it has not been complied with. There is, however, a general power of discharge under sec. 75, *post.* Any person detaining a patient after being duly served with notice of discharge is guilty of misdemeanour, sec. 76, subs. (2), *post.*

(Act of 1889, s. 24, subs. (3).)

(3) Every order and certificate amended under this section shall take effect as if the amendment had been contained therein when it was signed.

See notes to subss. (1) and (2), *sup.*

When amendment takes effect.

Take effect.—An amendment (*a*) under subs. (1) should not be made and does not take effect till the Commissioners and (in the case of single patients) the Commissioners and the judicial authority have sanctioned it; (*b*) under subs. (2) takes effect whenever the amend-

ment required by the Commissioners has been duly made to their satisfaction.

Sec. 35 (1).

35. (1) A reception order, if the same appears to be in conformity with this Act, shall be sufficient authority for the petitioner or any person authorised by him, or in the case of an order not made upon petition for the person authorised so to do by the person making the order, to take the lunatic and convey him to the place mentioned in such order and for his reception and detention therein, and the order may be acted on without further evidence of the signature or of the jurisdiction of the person making the order.

Authority for reception. (Act of 1889, s. 6, subss. (1) and (2), s. 8, subs. (8).)

Object of section.

This subsection is based on subss. (1) and (2) of sec. 6, and subs. (8) of sec. 8 of the Act of 1889.

Reception order.—Definition of, sec. 341, *post.* The term "reception order" is here used in the widest sense. It includes reception orders, secs. 4-6, *ante;* urgency orders, sec. 11, *ante;* orders by committee of person, sec. 12, *ante;* summary reception orders, secs. 13-22, *ante;* orders by two Commissioners, sec. 23, *ante;* or the Lord Chancellor, sec. 206, subs. (3), *post.*

The object of this section is to make the reception order a sufficient justification (*a*) for the conveyance of the lunatic by the petitioner, or some one authorised by him, or in the case of an order not made on petition, by the person named in the order, to the place mentioned; (*b*) for his reception and detention there; and (*c*) for his recapture if he escapes (see sec. 85, *post*). In sec. 99 of the Act of 1845 (8 & 9 Vict. c. 100), which corresponded to the present section, power to recapture was expressly given; such power is both implied in the power to detain and to act on the reception order contained in this subsection, and also expressly conferred by sec. 85, *post.* The order affords a good justification, although the person named in it is not in fact insane.[1] The patient in such a case may obtain release by *habeas corpus* or by application to the Commissioners in Lunacy, sec. 75, *post.*

Sufficient authority.—The order, if made on petition, is merely an authorisation for the conveyance of the lunatic to, and his reception in, the institution named in it, and there is no machinery in the Act for its enforcement by the judicial authority. The order will, however, expire unless put into force within seven clear days from its date, sec. 36, subs. (3), *post;* and if the petitioner fails to execute

[1] *Norris* v. *Seed,* 1849, 3 Ex. 782; and *Mackintosh* v. *Smith,* 1865, 4 Macq. H.L. 913.

Sec. 35 (1), (2).

it, he does so at the risk of prosecution (*a*) under sec. 315, *post*, for detaining the lunatic for payment in an unlicensed house, and (*b*) at common law for detaining the lunatic at all, unless he can show that the detention was necessary to prevent injury to the lunatic himself or others.[1]

Requisites of order.

If the same appears to be.—It is conceived that the person receiving the lunatic must see (1) from its date that the order is in force, see sec. 36, subs. (3), *post;* (2) that the requisite documents accompany the order, see subs. (2), *inf.*; (3) that the order and the other documents correspond, and are consistent and *ex facie* in conformity with the Act, in order to entitle him to the benefit of this section. As he is enabled to act without evidence of signature or jurisdiction, it seems only reasonable that he should be required to see that the statutory provisions have been formally complied with.

As to amendment of orders and certificates, see sec. 34, *sup.*

As to protection of persons acting under, see sec. 330, *post.*

An order not made upon petition, e.g. urgency orders, sec. 11, *ante;* orders by committee of person of lunatic, sec. 12, *ante;* summary reception orders, secs. 13-22, *ante;* order by two Commissioners, sec. 23, *ante;* or by the Lord Chancellor, sec. 206, subs. (3), *post.*

Take the lunatic.—The forcible removal of the lunatic is justifiable, but only so much force as is necessary for the purpose may be used.

Detention.—As to the recapture of escaped lunatics, see secs. 85-89, *post.* This section must be read with the other provisions in the Act relating to detention, *e.g.* the duration of an urgency order is seven days from its date, or till a pending petition for a reception order is disposed of, sec. 11, subs. (6), *ante;* and see notes to sec. 21, subs. (3), *ante;* sec. 24, subss. (2) and (3), *ante;* and sec. 38, *post.*

(Act of 1889, s. 6, subs. (2).)

(2) In the case of a reception order made upon petition, the order, together with the petition, statement of particulars, and medical certificates upon which the order was made, shall be delivered or sent by post to the person on whose petition the order was made, and shall by him or his agent be delivered to the manager of the institution for lunatics in which, or to the person by whom, the lunatic is to be received.

This subsection re-enacts subs. (2) of sec. 6 of the Lunacy Act 1889.

Reception order made upon petition.—See sec. 4, *ante.*

Petition . . . medical certificates.—See secs. 4, 28, and notes thereon, *ante.*

[1] Cp. *Brookshaw* v. *Hopkins*, 13 Geo. III., Lofft 243; *Scott* v. *Wakem*, 1862, 3 F. & F. 328; *Symm* v. *Fraser*, 1863, *ib.* 859.

Sec. 36 (1), (2).

Delivered.—It is the duty of the judicial authority making the order to see that the requirements of this subsection are complied with.

Sent by post.—See Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 26, cited *ante* p. 93.

The manager.—Definition of, sec. 341, *post.* See note to "if the same appears to be" in preceding subsection.

Institution for lunatics.—Definition of, sec. 341, *post.*

Fresh order and certificates not to be required in certain cases. (Act of 1889, s. 14, subs. (1).)

36. (1) Where a reception order has been made, and the execution of the order has been suspended, or the lunatic named in the order has been temporarily taken to a workhouse under the provisions of this Act, he may be received in the institution for lunatics named in the order at any time within fourteen days after the date of the reception order.

This subsection re-enacts subs. (1) of sec. 14 of the Act of 1889.

A reception order.—This subsection and subs. (2) deal only with summary reception orders whose execution has been suspended, or where the lunatic has been temporarily removed to a workhouse.

Execution . . . suspended.—See sec. 19, subs. (1), *ante.*

Lunatic.—Definition of, sec. 341, *post.*

Temporarily taken, etc.—See sec. 21, *ante.*

Workhouse.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

(Act of 1889, s. 14, subs. (2).)

(2) If the removal of the lunatic has been suspended by reason of a medical certificate that the lunatic is not in a fit state for removal, the lunatic may be received in the institution for lunatics named in the order within three days after the date of a medical certificate that the lunatic is in a fit state to be removed.

This subsection re-enacts subs. (2) of sec. 14 of the Act of 1889.

See notes to preceding subsection.

Suspended by reason of a medical certificate.—See sec. 19, subs. (2), *ante.*

Within three days.—Sundays, etc., included.

Date, i.e. the day of the date, see *ante* p. 164.

A medical certificate.—This certificate may be made either by the medical practitioner originally certifying that the lunatic is not in a fit state to be removed, or by some other practitioner, sec. 19, subs. (2), *ante.*

Sec. 36 (3).

(Act of 1889, s. 6, subs. (3).)

(3) In all other cases a reception order shall cease to be of any force unless the lunatic has been received thereunder before the expiration of seven clear days from its date.

This subsection re-enacts subs. (3) of sec. 6 of the Act of 1889.

Reception order.—In this subsection the term reception order is used in its widest sense, and includes all reception orders other than those excepted in the two preceding sections. See definition of "reception order," sec. 341, *post.*

Cease to be of any force.—This is one of the points in which a person receiving a lunatic must see that the order "appears to be in conformity with the Act," in order to entitle himself to the benefit of sec. 35, subs. (1), *ante.* As to the other points, see notes to "if the same appears to be," in sec. 35, subs. (1), *ante.*

Clear days, i.e. all days, Sundays, etc., included, but exclusive of the terminal days.[1]

Order and certificate to remain in force in certain cases.

37. (1) An order for the reception of a patient as a pauper shall extend to authorise his detention though it may afterwards appear that he is entitled to be classified as a private patient, and an order required for the reception of a private patient shall authorise his detention although it may afterwards appear that he ought to be classified as a pauper patient.

This subsection is based on the Lunacy Acts of 1862 (25 & 26 Vict. c. 111), sec. 26, and of 1845 (8 & 9 Vict. c. 100), sec. 87.

Order for the reception, etc.—See secs. 14 and 16, *ante.*

Pauper.—Definition of, sec. 341, *post.*

Authorise.—See note to "sufficient authority" in sec. 35, subs. (1), *ante.*

Private patient.—Definition of, sec. 341, *post.*

(2) If a patient is removed temporarily under the provisions of this Act from the place in which he is confined, or is transferred from one place of confinement to another, the original order and certificate or certificates upon which he was received shall remain in force.

This subsection re-enacts sec. 87 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Removed temporarily.—See sec. 55, *post.*

Transferred.—See secs. 57-71, *post.*

[1] *Liffin* v. *Pitcher*, 1842, 1 Dowl., N.S., 767.

Sec. 38 (1), (2).

Duration of Reception Orders.

Duration of reception orders. (Act of 1889, s. 30, subs. (1).)

38. (1) Every reception order dated after or within three months before the commencement of this Act, shall expire at the end of one year from its date, and any such order dated three months or more before the commencement of this Act shall expire at the end of one year after the commencement of this Act, unless such orders respectively are continued as hereinafter provided.

This subsection re-enacts subs. (1) of sec. 30 of the Lunacy Act 1889.

Every reception order.—Definition of, sec. 341, *post*. An order for the removal of a patient from one custody to another is not a reception order within the meaning of this subsection. See subs. (3), *inf*.

Within three months.—Month means calendar month (Interpretation Act 1889, 52 & 53 Vict. c. 63, sec. 3). Meaning of "months."

The commencement of this Act, i.e. 1st May 1890, sec. 3, *ante*.

Expire.—A reception order, except in the cases indicated in subss. (1) and (2) of sec. 36, *ante*, ceases to be of any force unless the lunatic is received under it before the expiration of seven clear days from its date, sec. 36, subs. (3), *ante*. Expiration of orders.

From its date.—Date means day of the date, which is excluded from the computation.[1] Meaning of "date."

Any such order.—See note to "reception order," *sup*.

Continued.—There may be an extension of the orders in the case of institutions for lunatics by the Commissioners under their seal, see subs. (2) *inf*. As to the mode in which the continuance is effected, see subs. (4), *inf*.

(Extension of orders by commissioners. Act of 1889, s. 30, subs. (2).)

(2) In the case of any institution for lunatics the Commissioners may by order under their seal direct that the reception orders of patients detained therein shall, unless continued as hereinafter provided, expire on any quarterly day next after the days on which the orders would expire under the last preceding subsection.

This subsection re-enacts subs. (2) of sec. 30 of the Lunacy Act 1889.

[1] *Pugh* v. *Duke of Leeds*, 1777, 2 Cowp. 714.

Sec. 38 (2)-(4).

Institution for lunatics.—Definition of, sec. 341, *post.* This subsection does not apply to orders for the reception of single patients.

The Commissioners.—Definition of, sec. 341, *post.*

Order under their seal.—As to such orders, see sec. 152, subs. (1), *post.*

As to powers of Commissioners to make rules, see sec. 161, *post.*

Commissioners' order sufficient authority.

The order of the Commissioners, extending reception orders under this subsection, is a sufficient authority for the continued detention of the patients.

As to protection of persons putting the Act in force, see sec. 330, *post.*

Continued as hereinafter provided.—See subs. (4),. *inf.*

(Order for removal of patient from one custody to another. Act of 1889, s. 30, subs. (3).)

(3) An order for the removal of a patient from one custody to another shall not be deemed to be a reception order within this section, but the patient who is removed shall after removal be deemed to be detained under the original reception order as a lunatic, and such order shall expire in accordance with the provisions of this section, unless continued as hereinafter provided.

This subsection re-enacts subs. (3) of sec. 30 of the Lunacy Act 1889.

An order . . . another.—See secs. 57-71, *post.*

Not be deemed to be, i.e. shall be conclusively taken not to be, see *ante* p. 138.

Reception order . . . section.—As to what are reception orders within this section, see note to subs. (1), *sup.*

Lunatic.—Definition of, sec. 341, *post.*

In accordance with.—See notes to subss. (2) and (4).

Continued.—See subs. (4), *inf.*, and notes thereon.

(Continuance of reception orders. Act of 1889, s. 30, subs. (4).)

(4) *A reception order shall remain in force for a year after the date by this Act or by an order of the Commissioners appointed for it to expire, and thereafter for two years, and thereafter for three years, and after the end of such periods of one, two, and three years, for successive periods of five years, if at the end of each period of one, two, three, and five years respectively a special report of the medical officer of the institution, or of the medical attendant of the single patient, as to the mental and bodily condition of the patient, with a*

certificate under his hand certifying that the patient is still of unsound mind and a proper person to be detained under care and treatment, is sent to the Commissioners in manner hereinafter directed. Such report shall be sent to the Commissioners not more than one month, and not less than seven days, before the end of each period.

Sec. 38 (4).

Form 13.

7. (4) **A reception order shall remain in force for a year after the date by this Act or by an order of the Commissioners appointed for it to expire, and thereafter for two years, and thereafter for three years, and after the end of such periods of one, two, and three years, for successive periods of five years, if not more than one month nor less than seven days before the expiration of the period at the end of which, as fixed by this Act or by an order of the Commissioners under subsection two, the order would expire, and of each subsequent period of one, two, three, and five years respectively, a special report of the medical officer of the institution, or of the medical attendant of the single patient, as to the mental and bodily condition of the patient, with a certificate under his hand certifying that the patient is still of unsound mind and a proper person to be detained under care and treatment, is sent to the Commissioners.**

Substituted by Act of 1891, sec. 7.

Origin of provisions for recertification.

The Dillwyn Committee (*ubi. sup.*, at p. 73) recommended, and the Commissioners in Lunacy in their 33rd Annual Report (1879, at p. 135) expressed their concurrence in the recommendation, that an order for reception should be valid for three years only, without a special report at the end of that time from the medical superintendent, to be repeated at the end of each subsequent year.

Sec. 38 of Act of 1890.

Subs. (4) of sec. 38 of the Act of 1890 gave effect to the principle of this recommendation. It provided that a reception order should remain in force for one year after the date appointed for it to expire—(*a*) by the Act of 1890, viz. in the case of orders dated after or within three months before the commencement of the Act (1st May 1890), the date of the order, and in the case of orders dated three months or more before the commencement of the Act, the date of such commencement (subs. 1, *sup.*); or (*b*) by the Commissioners, who in the case of institutions for lunatics (definition of, sec. 341, *post*) have power to extend the date of expiration to the next quarterly day (subs. 2, *sup.*), and thereafter for two years, and thereafter for three years, and after the end of such periods of one, two, and three years, for successive periods of five

Sec. 38 (4).

Section substituted by Act of 1891. Wherein differs from sec. 38 of Act of 1890.

years, if not more than a month nor less than seven days before any date of expiration the special report and certificate mentioned in the subsection were sent to the Commissioners. It will be observed that the subsection substituted by the Act of 1891 for subs. (4) in sec. 38 of the Act of 1890 merely differs from that subsection—(1) in incorporating the statement as to the time within which "the special report" must be sent into the imperative portion of the subsection (any question whether that proviso is imperative or directory is thus obviated); and (2) in the omission of the words at the end of the subsection "in manner hereinafter directed." No such directions were given in sec. 38 of the Act of 1890, and the words were therefore misleading.

Scope of section.

A reception order.—Definition of, sec. 341, *post.* The section does not apply to lunatics so found by inquisition, subs. (10), *post*; nor is a transfer order a reception order within its meaning, subs. (3) *sup.*

"Shall remain in force."

Shall remain in force.—The words in subs. (1), *sup.*, are "shall expire." Possibly the positive form is used here because the object of the subsection is to provide affirmatively for the continuance of the reception order.

The date by this Act.—See general note to this subsection, and subss. (1) and (2), *sup.*

An order of the Commissioners.—See subs. (2), *sup.*

Expire.—A manager detaining a patient after he has knowledge that the order for his reception has expired is guilty of a misdemeanour, subs. (7), *post*, unless he can justify the detention at common law by showing that it was necessary for the safety of the lunatic, or of others, see *ante*, p. 86.

"Not more than a month nor less than 7 days."

If not more . . . days.—In the corresponding subsection in the Act of 1890 this clause was placed as an independent sentence at the end. By its incorporation in the main body of the subsection any question as to its imperative character is avoided. "Month" means calendar month, Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3. The special report must be sent to the Commissioners not more than twenty-eight days before the date fixed for the expiration of the order. Thus if the order is to expire on the 31st March, the report is not to be sent before the 3rd. Thus in the case supposed, viz. of an order to expire on 31st March, the report must be sent at latest by the 23rd, the terminals being excluded.[1] "Not less than seven days" means not less than seven clear days.

A special report.—As to form of, see Commissioners' Rules, 1895, r. 26. May include and refer to more than one patient, subs. (8), *inf.*

A certificate.—Form of, Form 13, Sched. ii., *post.* May include and refer to more than one patient, subs. (8), *post.*

As to use of such forms, sec. 339, *post.*

Protection of persons signing, sec. 330, *post.*

Wilful misstatement of material fact in, a misdemeanour, sec. 317, subs. (2), *post.*

[1] Cp. *Railway Sleepers Supply Co.*, 1885, 29 Ch.D. 204.

Sec. 38 (4)-(6).

The report and certificate are apparently to be sent to the Commissioners by the manager of the institution, or by the person having charge of the single patient, see subs. (7), *post.*

Failure to send it is a misdemeanour, see sec. 320, *post.*

As to evidence on prosecution, sec. 329, subs. (1), *post.*

Medical officer.—Definition of, sec. 341, *post.*

Institution.—Definition of, sec. 341, *post.*

Sent.—In the corresponding subsection in the Act of 1890, the words "in manner hereinafter directed" were added. But no direction was given in the section, and they have therefore properly been omitted.

Failure to send the report and certificate is a misdemeanour, sec. 320, *post.*

As to what is sufficient evidence of report and certificate being sent, on a prosecution, see sec. 329, subs. (1), *post.*

The Commissioners.—The Commissioners may require further information, subs. (5), *inf.*

(Act of 1889, s. 30, subs. (5).)

(5) The person sending the special report shall give to the Commissioners such further information concerning the patient to whom the special report relates as they require.

This subsection re-enacts subs. (5) of sec. 30 of the Lunacy Act 1889.

Information to Commissioners.

The person sending.—It is conceived that the report and certificate should be sent by the manager of an institution or person having charge of a single patient. It is the detention which has to be justified. See note to "expire" in subs. (4), *sup.*, as to detention at common law, and subs. (7), *post.*

The special report.—See notes in preceding subsection.

As to annual reports by medical practitioner attending single patients, see Commissioners' Rules, 1895, r. 17, *post.*

The Commissioners.—Definition of, sec. 341, *post.* Appointments and duties of, secs. 150-162, *post.*

Such further information.—Failure to give such information is a misdemeanour, sec. 320, *post.*

(Act of 1889, s. 30, subs. (6).)

(6) If in the opinion of the Commissioners the special report does not justify the accompanying certificate, then—

(Further inquiries by Commissioners.)

(*a*) In the case of a patient in a hospital or licensed house or under care as a single patient, the Commissioners shall make further inquiry, and if dis-

Sec. 38 (6), (7).

satisfied with the result, they or any two of them may by order direct his discharge:

(*b*) In the case of a patient in an asylum, the Commissioners shall send a copy of the report, with any other information in their possession relating to the case, to the clerk to the visiting committee of the asylum, and the committee, or any three of them, shall thereupon investigate the case, and may discharge the patient or give such directions respecting him as they may think proper.

This subsection re-enacts subs. (6) of sec. 30 of the Act of 1889.

The special report.—See notes to subs. (4), *sup.*

The accompanying certificate.—See notes to subs. (4), *sup.*

Hospital.—Definition of, sec. 341, *post.*

Licensed houses.—As to licensed houses, see sec. 177, *post.*

Single patient.—As to reception of, see sec. 5, *ante.*

Further inquiry.—They may call for further information from the person sending the report, subs. (5), *sup.* (failure to give such information is a misdemeanour, sec. 320, *post*), visit the patient, or take any other proper steps.

Any two of them.—The order need not be under the seal of the Commission, see sec. 152, subs. (1), *post.* As to orders of discharge by Commissioners, see secs. 75, 76, *post.* Any person duly served with such an order, and detaining a patient after the date of discharge, is guilty of a misdemeanour, sec. 76, subs. (2), *post*, and see subs. (7), of this section, *inf.*

Asylum.—Definition of, sec. 341, *post.*

The report, with any other information, e.g. the certificate and the information derived under subs. (5), *sup.*, from the person sending the special report. It is intended that in the case of patients in asylums "the further inquiry" referred to in clause (*a*) of this subsection should be made by the visiting committee.

Visiting committee.—Definition of, sec. 341, *post.* As to appointment of, see sec. 169, *post.*

Investigate . . . proper.—As to investigation and discharge by visiting committee, see sec. 77, *post.*

(Detention after expiration of order a misdemeanour. Act of 1889, s. 30, subs. (7).)

(7) The manager of any institution for lunatics, and any person having charge of a single patient, who detains a patient after he has knowledge that the order for his reception has expired, shall be guilty of a misdemeanour.

Sec. 38 (7)-(9).

This subsection re-enacts subs. (7) of sec. 30 of the Lunacy Act 1889.

Manager.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Single patient.—As to reception of, see sec. 5, *ante.*

Detains.—Unless he can justify the detention at common law as necessary for the safety of the lunatic or other persons, see *ante* p. 86.

Knowledge.—The manager or person in charge will be held to have knowledge both of the provisions of the Act and of the dates at which the orders on which lunatic patients are detained expire.

Expired.—As to the date of expiration, see subss. (1), (2), and (4), pp. 179-181.

The Commissioners may extend the duration of reception orders, in case of institutions for lunatics, to next quarterly day, after date appointed for expiration, subs. (2), *sup.* The power may conveniently be exercised in cases of further inquiries being necessary.

Failure to comply with order of discharge is also a misdemeanour, sec. 76, subs. (2), *post.*

As to prosecution, see secs. 325, 328, *post.*

As to punishment of misdemeanour in cases where no penalty is prescribed, see note to sec. 7, subs. (4), *ante.*

(8) The special reports and certificates under this section may include and refer to more than one patient. (Act of 1889, s. 30, subs. (8).)

This subsection re-enacts subs. (8) of sec. 30 of the Lunacy Act 1889.

Special reports.—See notes to subs. (4), *sup.*

Certificates.—See notes to subs. (4), *sup.*

(9) A certificate under the hand of the secretary to the Commissioners that an order for reception has been continued to the date therein mentioned shall be sufficient evidence of the fact. (Act of 1889, s. 30, subs. (9).)

This subsection re-enacts subs. (9) of sec. 30 of the Lunacy Act 1889.

The secretary to the Commissioners.—As to the secretary of the Commissioners, see secs. 154-158, *post.*

Order . . . mentioned.—As to continuance of orders, see subss. (1)-(8).

Sufficient evidence, i.e. the manager or person in charge of a single patient may act upon it and rely upon it in any legal proceedings instituted against him. It is conceived that *sufficient* is here equivalent to *conclusive*—assuming that the certificate is proved to be in reality

Sec. 38 (10).

that of the Secretary to the Commissioners—and that such cases as *Barraclough* v. *Greenhough*[1] and *Hewitt* v. *Taylor*[2] do not apply.

(Section not applicable to lunatics so found.)

(10) This section shall not apply to lunatics so found by inquisition.

There was no provision to this effect in the Act of 1889. But it was implied, since sec. 50 of that Act (cp. sec. 115 of the present Act, *post*) contained special provisions as to the expiration of orders for commitment of the person.

Lunatics.—Definition of, sec. 341, *post.*

Inquisition.—Definition of, sec. 341, *post.* As to, see sec. 90, *post.*

Part II.

CARE AND TREATMENT.

Reports upon and visits to private patients. (Act of 1889, s. 29, subs. (1).)

39. (1) The medical officer of every institution for lunatics and the medical attendant of every single patient shall at the expiration of one month after the reception of a private patient prepare and send to the Commissioners a report as to the mental and bodily condition of the patient, in such form as the Commissioners direct.

Medical officer.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Single patient.—As to reception of, see sec. 5, *ante.*

Report to Commissioners at expiration of month.

Month.—"Month" means calendar month, Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3. "At" refers to a point of time rather than a period.[3] Here it seems to mean "on." *Semble* the report should be prepared and sent on the day on which the month expires.

The reception, i.e. the date of the reception.

Private patient.—Definition of, sec. 341, *post.*

Report, when to be prepared.

Prepare and send.—It is conceived that the examination of the patient ought to be made on, and not before, the day on which the month expires. The object of the section appears to be to secure the lapse of a month, and no more, before the report is prepared and sent, in order at once to give the medical attendant time to form a trustworthy judgment and to avoid undue delay. As to evidence of sending such reports, see sec. 329, subs. (1), *post.*

The Commissioners.—Definition of, sec. 341, *post.* As to reception of single patients, see sec. 5, *ante.*

[1] 1867, 8 B. & S., 623.
[2] 1896, 12 Times L.R., 192.
[3] Cp. *Railway Sleepers Supply Co.* 1885, 29 Ch.D., at p. 206.

Sec. 39 (1), (2).

"Mental and bodily condition of patients."

A report.—Prior to the enactment of sec. 29, subs. (1) of the Lunacy Act 1889, of which the present subsection is a reproduction, a statement of the mental condition of every patient was required to be forwarded to the office of the Commissioners in Lunacy after two and within seven days subsequent to admission. The requirements of the Acts were fulfilled if the medical officer gave merely the form of the mental disorder, and reported the bodily health to be "good" or "indifferent," as the case might be, and most statements contained little more, unless indeed some doubt existed as to the continuance of the insanity, when longer explanations were inevitable. The Dillwyn Committee, adopting a suggestion emanating from the Chairman of the Lunacy Commissioners, recommended that a second report of mental and bodily condition should in all cases be transmitted to the Commissioners at the expiration of a month after admission of the patient,[1] and the Commissioners in Lunacy both accepted this recommendation and suggested that the original statement, or "First Report," as they proposed to call it, should be made more precise by statute, so as to constitute in full an additional certificate, and should set forth, like a certificate, the facts observed by the medical superintendent or attendant, leading to the conclusion that the patient is insane, and stating whether any improvement has been observed, and giving a succinct note of the main features of that case.[2]

Wilful misstatement of material fact in, a misdemeanour, sec. 317, subs. (2), *post.*

Protection of person making, sec. 330, *post.*

In such form.—As to form of this report, see Rules of Commissioners in Lunacy, 1895, Form 13, *post.*

(Act of 1889, s. 29, subs. (2).)

(2) The medical officer of every house licensed by justices shall also at the same time send a copy of such report to the clerk of the visitors of licensed houses in the county or borough where the house is situate, to be by him laid before the visitors.

Copy of reports to visitors, when?

This subsection re-enacts subs. (2) of sec. 29 of the Lunacy Act 1889.

Medical officer.—Definition of, sec. 341, *post.*

House licensed, etc.—See sec. 177, *post.*

Justices.—As to licences by, see sec. 208, *post.* Definition of, sec. 341, *post.*

Send.—As to evidence of sending, on prosecution, see sec. 329, sub. (1), *post.*

Such report.—See subs. (1), *sup.*

Clerk.—Definition of, sec. 341, *post.*

Visitors.—As to visitors of licensed houses, see sec. 177, *post.*

[1] Report, p. iv.

[2] 33rd Annual Report, p. 131.

Sec. 39 (3), (4).

County.—Definition of, sec. 341, *post.*

As to action of visitors on receipt of report under this subsection, see subs. (4), *inf.*

(Visitation by Commissioners on receipt of report. Act of 1889. s. 29, subs. (3).)

(3) The Commissioners, after receiving the report upon any patient in a licensed house within their immediate jurisdiction, shall make arrangements for a visit being paid as soon as conveniently may be to the patient by one or more of the Commissioners; and the Commissioner or Commissioners so visiting shall report to the Commissioners whether the detention of the patient is or is not proper.

This subsection re-enacts sec. 29, subs. (3) of the Lunacy Act 1889.

The Commissioners.—Definition of, sec. 341, *post.*

The report.—See subs. (1), *sup.*, and notes.

As to duties and powers of Commissioners in cases of (*a*) reports by visitors, subs. (4), *inf.*; (*b*) single patients, subs. (5), *inf.*

Licensed house.—See sec. 177, *post.*

Immediate jurisdiction.—As to this, see sec. 208, subs. (1), *post.*

Shall report.—The Commissioners on receipt of the report may make an order for the patient's discharge, subs. (9), *inf.*

(Visitation by visitors after receipt of report. Act of 1889, s. 29, subs. (4).)

(4) The visitors, after receiving the report, shall, in every case of a private patient in a licensed house in the county or borough for which the visitors are appointed, make arrangements for a visit being paid by the medical visitor (either alone or with one or more of the other visitors) to the patient therein named, for such purpose as aforesaid, as soon as conveniently may be; and if on such visit there appears to be any doubt as to the propriety of the detention of the patient, such visitor or visitors shall forthwith report the same in writing to the Commissioners, who shall thereupon make all such further inquiries as may be necessary to satisfy themselves whether the patient is properly detained as a lunatic, or whether he ought to be discharged, or whether the case ought to be reported to the Lord Chancellor with a view to an inquisition.

Sec. 39 (4), (5).

This subsection re-enacts sec. 29, subs. (4) of the Lunacy Act 1889.

Visitors.—See subs. (3), *sup.* As to visitors of licensed houses, see sec. 177, *post.*

The report.—See notes to subs. (1), *sup.*

Private patient.—Definition of, sec. 341, *post.*

County.—Definition of, sec. 341, *post.*

Medical visitor.—As to remuneration of, see sec. 177, subs. (12), and sec. 225, *post.*

Report.—Wilful misstatement of material fact in, a misdemeanour, sec. 317, subs. (2), *post.*

The Commissioners.—Definition of, sec. 341, *post.* The Commissioners may make an order for discharge under this section, *v.* subs. (9), *inf.*

Protection of visitors making report, sec. 330, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Discharge.—As to discharge of lunatics, see secs. 72-82 *post.*

Reported to.—As to reports by Commissioners to Lord Chancellor with a view to an inquisition, see sec. 50, *post.*

Lord Chancellor.—The Lord High Chancellor for Great Britain. The Lord Chancellor of Ireland for Ireland, see *post*, p. 198.

Inquisition.—Definition of, sec. 341, *post.*

As to, see sec. 90, subs. (1), *post.*

(Visitation of single patients. Act of 1889, s. 29, subs. (5).)

(5) In the case of a single patient the Commissioners, after receiving the report, shall either make arrangements for a visit being paid as soon as conveniently may be to the patient therein named by one or more of the Commissioners, or, if no Commissioner is available, shall cause a copy of the report to be sent to a medical visitor for the county or borough in which the single patient resides, or to some other competent person, and shall direct him to visit the patient therein named as soon as conveniently may be. The Commissioner or Commissioners, or other person visiting the patient, shall report to the Commissioners whether his detention is or is not proper.

This subsection re-enacts sec. 29, subs. (5) of the Lunacy Act 1889.

Single patient.—As to reception of, see sec. 5, *ante.*

As to visitation of private patients in asylums and hospitals, see subs. (7), *inf.*

The Commissioners.—Definition of, sec. 341, *post.*

Report.—See subs. (1), *sup.*

Sec. 39 (5)-(7).

Medical visitor.—As to remuneration of, see subs. (6), *inf.*

As to the remuneration of a medical visitor appointed by the justices under subs. (4), *sup.*, see sec. 177, subs. (12), and sec. 225, *post.*

County.—Definition of, sec. 341, *post.*

Competent person.—As to remuneration of, see subs. (6), *inf.*

As to course Commissioners may subsequently take, see subss. (7) and (9), *inf.*

Shall report.—Wilful misstatement of material fact in such report is a misdemeanour, see sec. 317, subs. (2), *post.* As to protection of person making, see sec. 330.

(Powers and remuneration of visitor. Act of 1889, s. 29, subs. (6).)

(6) The person directed to visit a single patient under the last preceding subsection shall for that purpose have all the powers of a Commissioner, and the Commissioners may, with the consent of the Treasury, pay to him such reasonable remuneration for his services as they think fit out of any funds which may be provided by Parliament to defray the general expenses of the Commissioners.

This subsection re-enacts sec. 29, subs. (6) of the Lunacy Act 1889.

The person directed.—See subs. (5), *sup.*

Single patient.—See subs. (5), *sup.*

All the powers.—As to the powers of the Commissioners in regard to the visitation of single patients, see secs. 198 to 200, *post.*

The Commissioners.—Definition of, sec. 341, *post.*

"The Treasury."

The Treasury.—The Treasury means the Lord High Treasurer, or the Commissioners, for the time being, of Her Majesty's Treasury, Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 12, subs. (2).

"Reasonable remuneration."

Reasonable remuneration.—This will be, in the case of a medical visitor, in addition to the salary allowed him by the justices under sec. 177, subs. (2), *post.*

Any funds, etc.—See sec. 155, subs. (2), *post.*

(Visitation by visiting committee of asylums or hospitals. Act of 1889 s. 29, subs. (7).)

(7) In the case of a private patient in an asylum or hospital the Commissioners, after receiving the report, shall either make arrangements for a visit being paid, as soon as conveniently may be, to the patient therein named by one or more of the Commissioners, who shall report to the Commissioners whether the detention of the patient is or is not proper; or the Commissioners shall send a copy of

Sec. 39 (7), (8).

the report to the clerk to the visiting committee of the asylum or to the managing committee of the hospital, and one or more members of the committee shall thereupon, as soon as conveniently may be, visit the patient named in the report, and report to the committee whether his detention is or is not proper, and the committee, or any three of them, may, upon consideration of such last-mentioned report, by writing under their hands discharge the patient, or give such directions with regard to him as they think fit.

This subsection re-enacts sec. 29, subs. (7) of the Lunacy Act 1889.

Private patient.—Definition of, sec. 341, *post.*

Asylum.—Definition of, sec. 341, *post.*

Hospital.—Definition of, sec. 341, *post.*

The Commissioners.—Definition of, sec. 341, *post.*

The report.—See subs. (1), *sup.*, and notes thereto.

Clerk.—Definition of, sec. 341, *post.*

Visiting Committee.—Definition of, sec. 341, *post.* As to visiting committees of asylums and hospitals, see secs. 169 and 269, subs. (10), *post.*

Discharge by visiting committee.

Discharge.—The Commissioners also may make an order for discharge, see subs. (9), *inf.*; and as to orders of discharge by Commissioners, see secs. 75 and 76, *post.*

(Special visit, where unnecessary. Act of 1889, s. 29, subs. (8).)

(8) If within a month after the reception of any private patient, the institution for lunatics or house into which he was received is visited by one or more Commissioners or by any visitors, and such patient is there seen and examined by him or them, and the propriety of his detention reported on in like manner as by this section provided, no special visit shall necessarily be paid to such patient after receipt of any such report.

This subsection re-enacts sec. 29, subs. (8) of the Lunacy Act 1889.

Within a month.—"Month" means calendar month, Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3. It is sufficient if the visit has been paid on or before the expiration of the 28th day after the day of the reception.

Reception of.—See sec. 5, *ante.*

Private patient.—Definition of, sec. 341, *post.*

Sec. 39 (8), (9).

The institution.—Definition of, sec. 341, *post.*

Lunatics.—Definition of, sec. 341, *post.*

House.—See sec. 177, *post.*

Visited.—As to visitation by Commissioners, see secs. 187 *et seq.*, *post.*

As to visitation by visitors, see secs. 187 *et seq.*, *post.*

Commissioners.—Definition of, sec. 341, *post.*

Necessarily be paid.—Special visits may, however, be paid at any time. See sec. 204, *post.*

(Commissioners may make orders for discharge. Act of 1889, s. 29, subs. (9).)

(9) If the Commissioners in any case under this section determine that a patient ought to be discharged, they may make an order for his discharge.

This subsection re-enacts sec. 29, subs. (9) of the Lunacy Act 1889.

The Commissioners.—Definition of, sec. 341, *post.*

Order.—As to discharge by Commissioners, see secs. 75 and 76, *post.*

The visiting committee also may discharge patients under subs. (7), *sup.*

Act of 1891, s. 8. Section 39. Application of section.

8. Section thirty-nine of the principal Act shall not apply to lunatics received under a removal order or to lunatics so found by inquisition.

Lunatics.—Definition of, sec. 341, *post.*

Received under a removal order.—See secs. 58-70, *post.*

Lunatics so found by inquisition.—See sec. 90, *post.* As to visitation of lunatics so found by Chancery Visitors, see secs. 183 *et seq.*, *post*, and Rules in Lunacy, 1893, r. 11, *post.*

Mechanical Restraint.

Mechanical means of restraint. (Act of 1889, s. 45, subs. (1).)

40. (1) Mechanical means of bodily restraint shall not be applied to any lunatic unless the restraint is necessary for purposes of surgical or medical treatment, or to prevent the lunatic from injuring himself or others.

This section re-enacts sec. 45, subs. (1) of the Lunacy Act 1889.

In their report for 1882 (36th Annual Report, at p. 91) the Commissioners in Lunacy comment on the general abolition of mechanical restraint in all English asylums, hospitals, and licensed houses. The subject has, however, recently come into notice again

Sec. 40 (1)-(3).

in consequence of (1) an interesting discussion in the *New York Medico-Legal Journal*, which may be referred to for information as to the views and practice of leading American and British alienists upon the matter, and the extent to which mechanical restraint prevails both in this country and in America (*New York Medico-Legal Society's Papers*, vol. iii. p. 35); and (2) the case of Thomas Weir, St. Ann's Heath, Virginia Water, 1895, 394.

Mechanical means.—The Commissioners may from time to time determine by regulations what these are. See subs. (6) *inf.*, and see definition of in regulations of 17th April 1895, *post.*

What is necessary to justify mechanical restraint.

In order to be justifiable, mechanical restraint must be (1) necessary for surgical or medical purposes, or to prevent the lunatic from injuring himself or others;[1] and (2)—see subs. (6), *inf.*—exercised by such instruments and appliances only as the Commissioners' regulations have for the time being prescribed. If either of these conditions were not fulfilled, it is conceived that an action might lie against the person applying the restraint at the instance of the lunatic, in addition to the criminal proceedings under subs. (7), *inf.* The application of more restraint than is necessary is an offence at common law.[2]

Any lunatic.—Definition of "lunatic," sec. 341, *post.*

Wilful contravention of this section is a misdemeanour, subs. (7), *inf.*

Protection of persons putting the Act in force, sec. 330, *post.*

(Medical certificate as to mechanical restraint. Act of 1889, s. 45, subs. (2).)

(2) In every case where such restraint is applied, a medical certificate shall, as soon as it can be obtained, be signed, describing the mechanical means used, and stating the grounds upon which the certificate is founded.

See notes to preceding subsection.

Medical certificate.—As to medical certificates, see sec. 28, *ante*, and notes thereon. No form is prescribed.

Signed.—As to who is to sign, see subs. (3), *inf.*

Wilful misstatement of any material fact in the certificate is a misdemeanour, sec. 317, subs. (2), *post*; and wilful failure to comply with this subsection in any respect is a misdemeanour under subs. (7), *post.*

Mechanical means.—Subs. (1), *sup.*

The grounds.—As to what are the grounds justifying mechanical restraint, see subs. (1), *sup.*

(Certificate, by whom signed. Act of 1889, s. 45, subs. (3).)

(3) The certificate shall be signed, in the case of a lunatic in an institution for lunatics or workhouse, by the

[1] The restraint of a lunatic is justifiable at common law on this ground, see *ante* p. 86.

[2] *Reg.* v. *Roberts*, 1853, 8th Rep. Com. Lun. 37.

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medical officer thereof, and in the case of a single patient, by his medical attendant.

The certificate.—See notes to subs. (2), *sup.*

Signed.—Sec. 30, *ante*, as to persons disqualified from signing, does not apply to certificates under this section.

Lunatic.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Workhouse.—Definition of, sec. 341, *post.*

Medical officer.—Definition of, sec. 341, *post.*

Single patient.—As to reception of, see sec. 5, *ante.*

Wilful contravention of this section is a misdemeanour, subs. (7), *inf.*

(Record of cases of restraint. Act of 1889, s. 45, subs. (4).)

(4) A full record of every case of restraint by mechanical means shall be kept from day to day; and a copy of the records and certificates under this section shall be sent to the Commissioners at the end of every quarter.

A full record.—As to the Register of Mechanical Restraint, see Rules of Commissioners in Lunacy, 1895, rr. 1 (1) (*d*), 2 (3), 3 (4), 16, *post.*

Mechanical means.—See subs. (1), *sup.*

A copy.—As to evidence of sending copies, in criminal proceedings under subs. (7), see sec. 329, subs. (1), *post.*

As to copies in case of workhouse, subs. (5), *inf.*

Certificates.—See notes to preceding subsections.

The Commissioners.—Definition of, sec. 341, *post.*

Wilful contravention of this subsection is a misdemeanour, subs. (7), *inf.*

(Records in case of workhouse. Act of 1889, s. 45, subs. (5).)

(5) In the case of a workhouse, the record to be kept under this section shall be kept by the medical officer of the workhouse, and the copies of records and certificates to be sent shall be sent by the clerk to the guardians.

Workhouse.—Definition of, sec. 341, *post*, and see note to "guardians," *inf.*

Record.—See subs. (4), *sup.*

Medical officer.—Definition of, sec. 341, *post.*

The copies.—See subs. (4), *sup.*

Certificates.—See subss. (2) and (3), *sup.*

The clerk.—Definition of, sec. 341, *post.*

The guardians.—Definition of, sec. 341, *post.* In the case of an asylum under the Metropolitan Poor Act 1867, copies should be

sent to the manager of such asylum. See definition of "workhouse," sec. 341, *post*.

Sec. 40 (6), (7).

(6) In the application of this section "mechanical means" shall be such instruments and appliances as the Commissioners may, by regulations to be made from time to time, determine.

(Act of 1889, s. 45, subs. (6).)

Meaning of "mechanical means."

Mechanical means.—See subs. (1), *ante*.
The Commissioners.—Definition of, sec. 341, *post*.
Regulations.—As to regulations by Commissioners, see sec. 338, subs. (1), *post*.
See latest regulations made under this subsection, *post*.

(7) Any person who wilfully acts in contravention of this section shall be guilty of a misdemeanour.

(Act of 1889, s. 45, subs. (7).)

Misdemeanour.—As to prosecutions, see secs. 325, 328, 329, *post*.
As to punishment, see note to sec. 7, subs. (4), *ante*.
Semble, this subsection does not take away any right on the part of a lunatic to institute civil proceedings in respect of the unjustifiable application of mechanical restraint. See note to subs. (1).
As to protection of persons putting the Act in force, see sec. 330, *post*.

Correspondence.

Correspondence of patients. (Act of 1889, s. 46, subs. (1).)

41. (1) The manager of every institution for lunatics, and every person having charge of a single patient, shall forward unopened all letters written by any patient and addressed to the Lord Chancellor or any Judge in Lunacy, or to a Secretary of State, or to the Commissioners, or any Commissioner, or to the person who signed the order for the reception of the patient, or on whose petition such order was made, or to the Chancery Visitors or any Chancery Visitor, or to any other visitors or visitor, or to the visiting committee, or any member of the visiting committee of the institution, in which any patient writing such letters may be, and may also at his discretion forward to its address any other letter if written by a private patient.

Sec. 41 (1).

Origin and object of subsection.

The question as to how the correspondence of patients should be dealt with had given rise to difficulty as far back as 1859. It had been ruled in a court of law that the relatives had a right to come to an understanding with the proprietor of a house, and to put a limit, if they pleased, to the correspondence sent to them by the patients. But there was practically no limit to the right of the patients to correspond with the Commissioners.[1] In point of fact, however, as all correspondence passed, or could be made to pass, through the hands of the superintendent, there was every opportunity for an improper control by the superintendent over the patients' correspondence, and, if the current reports were at all reliable, such control was frequently exercised.[2] There appears to have been, in the case of Chancery lunatics, the additional hardship that their correspondence was forwarded to the committee of the person, who was responsible to no one practically as to what he did with it. It was suggested to the Committee of 1859, with a view to remedying these evils, that some regulations ought to be made under which all letters to the Commissioners in Lunacy, or to the visitors, should be forwarded, and that with regard to other letters a record should be kept as to the reasons why the correspondence had not been permitted.[3] The Committee appear to have thought that the latter part of the proposal would be impracticable,[3] and they contented themselves with recommending that the *primâ facie* right of corresponding should be secured to the patients, and should never be refused by the authorities except on specified grounds, and with liberty to appeal by either patients or friends to the Commissioners or visitors against such refusal.[4]

Improper control over letters to Commissioners. Correspondence of Chancery lunatics forwarded to committee of person.

Recommendation of Committee of 1859.

Lunacy Regulation Act 1862.

The 40th sec. of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111) was the result of this recommendation. It applied to private patients only, and provided that all letters written by them to the Commissioners should be forwarded unopened, and that as regards other letters, while the superintendent's discretion to forward or detain them was in fact left undisturbed, he should lay any letters so detained before the Commissioners or the visitors on the next occasion. A few instances occurred under this Act of letters not addressed to the Commissioners being forwarded to the person who signed the reception order; and the Commissioners issued a circular to every hospital and licensed house, accompanied with a letter to the superintendent, insisting upon a strict compliance with the law,[5]—but otherwise the Act seems to have been obeyed, whatever may be thought of the efficacy of its provisions.

Dillwyn Committee,

The subject of the correspondence of patients was again discussed before, and reported upon by, the Dillwyn Committee in 1878. The views of the Committee on this point deserve notice on account both of their intrinsic interest and of the successful opposition which they met with, in regard to one material particular, from the Commissioners

[1] Committee of 1859, evidence of Lord Shaftesbury, Ans. 223.
[2] *Ib.* Ans. 2749-50.
[3] And see Lord Shaftesbury's evidence, *ib.* Ans. 845.
[4] Report of 1860, p. xi.
[5] Dillwyn Committee, 1878, Ans. 430.

Sec. 41 (1).

in Lunacy. After alluding[1] to the allegation that the power of opening letters exercised by superintendents excited the suspicion of patients, and dismissing a proposal that a post-box should be kept in asylums and cleared by a public official, on the grounds of the objectionable character of the letters and the difficulty with regard to postage, the Committee recommended that all letters detained by the superintendent should be forwarded by him unopened to the Commissioners on the day on which they were delivered to him. The reason assigned for this proposal was the labour entailed on the visitors by the inspection of letters on their periodic visits, and the waste of time which the process involved. The Commissioners in Lunacy, on the other hand, in their 33rd Annual Report[2] strongly criticised this suggestion, on the grounds (1) that the labour occasioned by the examination of letters was not excessive (the majority of them being obviously unfit for transmission were easily dealt with on the spot); and (2) that they having necessarily a less intimate knowledge of the patient's state of mind at the time of writing, his family affairs, and other circumstances, were less able than the superintendent to judge whether a letter should be forwarded to its address. The recommendation of the Dillwyn Committee has not, it will be observed, been embodied in the present section.

Recommendation of, as to correspondence.

Objections of Commissioners in Lunacy to.

This subsection re-enacts—extending its scope so as to include letters addressed to the Chancery Visitors, or any of them—sec. 46, subs. (1) of the Lunacy Act 1889. It also, unlike sec. 40 of the Lunacy Acts Amendment Act 1862, applies in terms, so far as correspondence with the Lord Chancellor, etc., is concerned, to the letters of *any* patient (whether a pauper or not), and as regards private correspondence to any private patient (*i.e.* patient not a pauper, sec. 341, *post*). It may be doubted, however, whether this section would be held to apply to pauper patients at all. Thus in sec. 42 it is the private patient alone who is treated as having any rights under this section, see *post* p. 199.

Act of 1890.

It will be noticed that no restriction is placed on the receipt of correspondence by patients, although letters sent to a patient may cause him far more injurious excitement than the act of writing letters. It is conceived, however, that a superintendent might detain for inspection by the Commissioners any letters sent to a patient in exceptional cases where he had good cause to think that such letters were of a dangerously exciting character; and there seems no reason why a patient should not be prevented from writing letters at any time when, in the opinion of the superintendent, it would seriously affect his state if he were permitted to do so.[3]

No express restraint on receipt of correspondence by patients. Query whether letters to patients could be withheld, or patient could be prevented from writing.

Manager.—Definition of, sec. 341, *post*.

Institution for lunatics.—Definition of, sec. 341, *post*.

[1] Report, p. vii.

[2] P. 137.

[3] The Commissioners in Lunacy in their 30th Annual Report mention a case of suicide of a patient in an asylum, supposed to be due to some extent to the disturbance of his mind by distressing news from home.

Sec. 41 (1), (2).

Lunatics.—Definition of, sec. 341, *post.*

Single patient.—As to reception of, see sec. 5, *ante.*

The Lord Chancellor.—The "Lord Chancellor" means, except when used with reference to Ireland only, the Lord High Chancellor of Great Britain for the time being; and when so used as aforesaid, the Lord Chancellor of Ireland for the time being (Interpretation Act 1889 (52 and 53 Vict. c. 63), sec. 12).

Judge in Lunacy.—Definition of, sec. 108, *post.*

A Secretary of State.—Definition of, note to sec. 33, *ante.*

The Commissioners.—Definition of, sec. 341, *post.*

Letters to the Commissioners are to be addressed to

THE SECRETARY,
COMMISSIONERS IN LUNACY,
19 WHITEHALL PLACE,
LONDON, S.W.

The order for the reception . . . made.—As to reception orders, see sec. 4, subs. (1), *ante.*

Chancery Visitors.—See sec. 163, *post.*

Visiting committee.—Definition of, sec. 341, *post.*

Private patient.—Definition of, sec. 341, *post.* See general note above.

As to posting up notice of right to have correspondence forwarded in pursuance of this section, see sec. 42, subs. (1), *inf.*

(Penalty for contravention of section. Act of 1889, s. 46, subs. (2).)

(2) Every manager of an institution for lunatics, and every person having charge of a single patient, who makes default in complying with the obligation imposed on him by this section, shall for each offence be liable to a penalty not exceeding twenty pounds.

This subsection re-enacts sec. 46, subs. (2) of the Lunacy Act 1889.

Manager.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Single patient.—As to reception of, see sec. 5, *ante.*

Default.—Whether wilful or not apparently; but see sec. 330, subs. (2), *post.*

Offence.—As to proceedings under this subsection, see secs. 326-328, *post.*

As to protection of persons against criminal proceedings, sec. 330, subs. (2), *post.*

As to default in posting up notices as to letters and interviews, see sec. 42, subs. (4), *inf.*

Notices.

42. (1) Whenever the Commissioners so direct, there

shall, unless there is no private patient therein, be posted up in every institution for lunatics, printed notices setting forth— Sec. 42 (1), (2).

Notices. (Right to correspondence. Act of 1889, s. 47, subs. (1).)

(*a*) The right of every private patient to have any letter written by him forwarded in pursuance of the last preceding section.

This subsection re-enacts sec. 47, subs. (1) of the Lunacy Act 1889.

The Commissioners.—Definition of, sec. 341, *post.* This limiting clause was introduced to give the Commissioners a discretion as to the posting of notices, in order to avoid causing excitement which might prove injurious to the patient (Hansard, 3rd ser. vol. 338, p. 1742). The Dillwyn Committee—on whose recommendation (Report of 1878, p. vii.) the corresponding section in the Act of 1889 was passed—had not inserted in their proposal any qualification of this kind. Object of limiting clause.

Unless there is no private patient.—Definition of "private patient," sec. 341, *post.* Although sec. 41, subs. (1), *sup.*, extends *in terms*, in so far as correspondence with the Lord Chancellor, Commissioners, etc., is concerned, to *any* patient, pauper or private, it may be doubted whether it would be held to do so in law. In this section, at any rate, it is only the private patient who is treated as having rights as to letters and interviews. Query whether right of patient as to correspondence extends to paupers.

Institution for lunatics.—Definition of, sec. 341, *post.*

Printed notices.—See Form, *post*, Appendix.

The right.—See note to "unless," etc., *sup.*

Any letter . . . forwarded.—See sec. 41, subs. (1), *sup.* As to letters written *to* patients, see note to sec. 41, subs. (1), *sup.*

(*b*) The right of every private patient to request a personal and private interview with a visiting Commissioner or visitor at any visit which may be made to the institution. (Right to interview.)

Right.—See note to "unless," etc., in (*a*), *sup.*

Private patient.—Definition of, sec. 341, *post.*

Visiting Commissioner or visitor.—See secs. 187, 191, *post.*

The institution.—Definition of "institution for lunatics," sec. 341, *post.*

(2) The notices shall be posted in the institution, so that every private patient may be able to see the same. (Posting of notices. Act of 1889, s. 47, subs. (2).)

This subsection re-enacts sec. 47, subs. (2) of the Lunacy Act 1889.

Sec. 42 (2)-(4).

The notices.—See subs. (1), *sup.*

Shall be.—It rests with the visiting Commissioners and visitors to decide, if any question arise, where the notices are to be posted, subs. (3), *inf.*

Institution.—Definition of, sec. 341, *post.*

Private patient.—Definition of, sec. 341, *post*; and see note to "unless," etc., in subs. (1) (*a*), *sup.*

(Visiting Commissioners or visitors to decide as to. Act of 1889, s. 47, subs. (3).)

(3) The visiting Commissioners or visitors may give directions as to the places in which such notices are to be posted.

This subsection re-enacts sec. 47, subs. (3) of the Lunacy Act 1889.

The visiting Commissioners or visitors.—See secs. 187, 191, *post.*

Directions.—See preceding subsection.

Notices.—See subs. (1), *sup.*

(Penalty for default. Act of 1889, s. 47, subs. (4).)

(4) If the manager of any institution for lunatics makes default in posting such notices, or does not within ten days carry out any directions as to such notices given by the visiting Commissioners or visitors, he shall for each offence be liable to a penalty not exceeding twenty pounds.

This subsection re-enacts sec. 47, subs. (4) of the Lunacy Act 1889.

Manager.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Default.—Whether wilful or not apparently; but see sec. 330, subs. (2), *post.*

Such notices.—See subs. (1), *sup.*

"Within ten days."

Within ten days, i.e. after the day on which the directions are given. The day of the giving of the directions is excluded.[1] "Days" means all days, Sundays, etc., included.

Visiting Commissioners.—See subs. (3), *sup.*

Offence.—As to proceedings, see secs. 326-328, *post.*

As to protection against criminal proceedings, see sec. 330, subs. (2).

43. (1) A medical practitioner who has signed a certificate upon which a reception order in the case of a private

[1] Cp. *re Railway Sleepers Supply Company*, 1885, 29 Ch.D. 204.

patient has been made shall not be the regular professional attendant of the patient while detained under the order.

Sec. 43 (1), (2).

Disqualification of certifying practitioner for being regular medical attendant.

This subsection re-enacts part of sec. 12 of the Lunacy Act of 1853 (16 & 17 Vict. c. 96).

Medical practitioner.—Definition of, sec. 341, *post.*

A certificate . . . reception order.—As to requirements of certificates and reception orders, see sec. 28, *ante, et seq.* Definition of "reception order," sec. 341, *post.*

Private patient.—Definition of, sec. 341, *post.*

Regular professional attendant.—Only regular professional attendance is prohibited by this subsection. The clause in subs. (2), *inf.*, commencing with "unless he is directed" is therefore here unnecessary.

(2) A medical practitioner, who is a Commissioner or visitor, shall not professionally attend upon a patient in a hospital or licensed house, unless he is directed to visit the patient by the person on whose petition the reception order was made, or by the Lord Chancellor, or a Secretary of State, or a committee appointed by the Judge in Lunacy.

(Disqualification of Commissioner or visitor for professional attendance.)

This subsection re-enacts part of sec. 23 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Medical practitioner.—Definition of, sec. 341, *post.*

Commissioner.—Definition of, sec. 341, *post.* It is only the unpaid Commissioners who can carry on private practice, see sec. 150, subs. (3), *post.*

Professional attendance.—A single professional visit would, it is conceived, be prohibited by this subsection. In the case of the medical practitioner who has signed the certificate, only regular professional attendance is prohibited, see subs. (1), *sup.*

As to disqualification of Commissioner or visitor from certifying, except under similar authority, see sec. 33, *ante.*

Hospital.—Definition of, sec. 341, *post.*

Licensed house.—As to, see sec. 207, *post.*

The person on whose petition the reception order.—See sec. 28, *ante, et seq.*

The Lord Chancellor . . . Secretary of State.—See notes to sec. 41, subs. (1), *sup.*

A committee.—As to appointment of, see sec. 108, subs. (2), *post.*

The Judge in Lunacy.—As to, see sec. 108, *post.*

44. (1) The Commissioners may by order direct how often any single patient is to be visited by a medical practitioner.

Order by Commissioners as to visitation of single patient.

Sec. 44 (1)-(3).

This subsection re-enacts part of sec. 15 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

The Commissioners.—Definition of, sec. 341, *post.*

By order.—Under the seal of the Commission, see sec. 152, subs. (1), *post.*

Single patient.—Other than a lunatic so found, subs. (5), *inf.*

As to reception of, see sec. 5, *ante.*

Visited by.—As to visits by Commissioners, see secs. 187, 191, 198, *post.*

Medical practitioner.—Definition of, sec. 341, *post.*

As to duties of medical attendant of single patient, see Commissioners' Rules, 1895, rr. 1 (3), 3 (2), 4, 8, 14, 15, 19 (2), 24, *post.*

Commissioners may direct that any medical attendant shall cease to act, subs. (4), *inf.*

Failure to comply with any direction by the Commissioners on the part of any person having charge of a single patient is a misdemeanour, subs. (4), *inf.*

A medical practitioner who has signed a certificate cannot be regular professional attendant, sec. 43, subs. (1), *sup.*

A medical practitioner who is Commissioner or visitor cannot properly attend unless under circumstances indicated in sec. 43, subs. (2), *sup.*

(Visitation of single patients till Commissioners' order made.)

(2) Until any such order is made, every single patient shall be visited once at least in every two weeks by a medical practitioner not deriving, and not having a partner, father, son, or brother, who derives any profit from the charge of the patient.

This subsection is based on part of sec. 90 of the Lunacy Act 1845 (8 & 9 Vict. c. 100) and sec. 14 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

Any such order.—See subs. (1), *sup.*

Single patient.—The section does not apply to lunatics so found, subs. (5), *inf.*

At least in every two weeks, i.e. from but excluding the day of the date of the reception as a single patient.

Medical practitioner.—Definition of, sec. 341, *post;* see notes to subs. (1).

(Change of medical attendant by Commissioners. Act of 1889, s. 34, subs. (1).)

(3) Any two Commissioners may direct that the medical attendant of a single patient shall cease to act in that capacity, and that some other person be employed in his place.

Sec. 44 (3)-(5).

This subsection re-enacts sec. 34, subs. (1) of the Lunacy Act 1889.

Commissioners.—Definition of, sec. 341, *post.*

Direct.—The order need not be under the seal of the Commission, see sec. 152, subs. (1), *post.*

Medical attendant.—See notes to medical practitioner in subs. (1), *sup.*

Single patient.—As to reception of, see sec. 5, *ante.*

(4) If a person having charge of a single patient fails to give effect to any direction of the Commissioners under this section, he shall be guilty of a misdemeanour.

(Failure to carry out direction of Commissioners a misdemeanour. Act of 1889, s. 34, subs. (2).)

This subsection makes failure to comply with *any* direction of the Commissioners under the section, and not merely—like sec. 34, subs. (2) of the Act of 1889, which it with this difference re-enacts—the directions as to visitation, a misdemeanour.

Single patient.—As to reception of, see sec. 5, *ante.*

Fails.—Whether wilfully or otherwise apparently; but see sec. 330, subs. (2), *post.*

Any direction, i.e. as to visitation or otherwise, see subs. (1), *sup.*

Misdemeanour.—As to proceedings, see secs. 325, 328, *post.*

As to punishment, see note to sec. 7, subs. (4), *ante.*

As to protection against criminal proceedings, see sec. 330, subs. (2), *post.*

(5) This section shall not apply to lunatics so found by inquisition.

(Section not applicable to lunatics so found.)

This subsection is necessary, because there is no definition of single patient in this Act, such as was contained in sec. 36 of the Lunacy Act 1853.

Lunatics.—Definition of, sec. 341, *post.*

Inquisition.—Definition of, sec. 341, *post*, and sec. 90, *post.*

As to visitation of, see sec. 183, *post.*

45. The Commissioners may at any time require from the medical attendant of a single patient a report in writing as to the patient, in such form and specifying such particulars as the Commissioners direct, and such report shall be in addition to any periodical reports required to be sent to the Commissioners.

Special report as to single patient.

This section re-enacts clause 2 of sec. 16 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

Sec. 45.

The Commissioners.—Definition of, sec. 341, *post.*
Single patient.—As to reception of, see sec. 5, *ante.*
A report.—Protection to persons making, sec. 330, *post.*
Wilful misstatement in, a misdemeanour, sec. 317, subs. (2).
Periodical reports.—As to periodical reports, see sec. 38, subs. (4), *ante.*

Power to take more than one person on same conditions as a single patient. (Act of 1889, s. 34, subs. (6).)

46. In the case of any person having charge of a single patient, if the Commissioners are satisfied that it is desirable, under special circumstances and for the interest of the patient, that another patient or more than one other should reside in the same house, that person may, with the approval of the Commissioners, receive such other patient or patients on the same terms and conditions in all respects as if each of them were a single patient.

This section re-enacts sec. 34, subs. (6) of the Lunacy Act 1889.
Single patient.—As to reception of, see sec. 5, *ante.*
The Commissioners.—Definition of, sec. 341, *post.*
Another patient, etc.—It is a misdemeanour, without the sanction of the Commissioners, to keep more than a single patient in an unlicensed house, sec. 315, subs. (3), *post.*
As to prosecution of offences, see secs. 325-328, *post;* and as to punishment of misdemeanours, see note, sec. 7, subs. (1), *ante.*

Admission to patients of friends, relations, and others.

47. (1) Any one of the Commissioners, as to patients confined in an institution for lunatics or other place (not being a gaol) authorised to be visited by the Commissioners, and any one of the visitors of a licensed house, as to patients confined in such house, may at any time give an order in writing under his hand for the admission to any patient of any relation or friend or of any medical or other person whom any relation or friend desires to be admitted to him.

Difficulties with reference to visitation of lunatics by friends.

This subsection re-enacts the first clause of sec. 85 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).
Two difficulties have arisen in the development of the lunacy law with regard to the visitation of the insane by their relatives and

friends. One was to induce persons who had insane relatives or friends in confinement to visit them (see this subject discussed in the notes to sec. 5, subs. (3), *ante*). The other was to secure free access to patients. It was to a refusal of access that the outcry against York Asylum and the consequent establishment of York Retreat, were due (*ante* p. 71). The corresponding provision in the Lunacy Act of 1845, *sup.*, was passed to secure a free right of visitation by friends and relatives. In point of fact, there has since the Act of 1845 very seldom been any objection on the part of persons engaged in the care of the insane to allow any relatives or friends, or medical men appointed by them, to see the patients at any proper time. The object of this section is to meet exceptional cases, where access is dishonestly and improperly refused, and to provide an appeal where it is refused on account of the health of the patient, of the want of interest in the visitor, the disquieting nature of the business, or on any other ground. Sec. 47 (1), (2).

Any one of the Commissioners.—Definition of Commissioners, sec. 341, *post.*

The order need not be under seal, see sec. 152, subs. (1), *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Other place . . . authorised, e.g. Broadmoor, *post.*

A gaol.—The visitation of insane persons in gaol is subject to the Prison Regulations.[1] Visitation of gaols.

Visitors.—As to visitors of licensed houses, see sec. 177, *post.*

A licensed house, i.e. not within the immediate jurisdiction of the Commissioners, sec. 208, subs. (1), *post.*

Relation.—See definition of relative, sec. 341, *post.* Relation is a wider term, and *semble* includes any relative by blood or marriage.

Other person.—These words cover the case of persons who are not relations or friends, but who, for instance, are representatives of societies interesting themselves in preventing abuses of the lunacy law. But in such cases the Commissioners would probably refuse to make any order, on the ground that the applicants had no *locus standi*.[2] The proper course for such persons to adopt is to apply to have the patient examined under sec. 49, *post.* It was suggested by the Dillwyn Committee[3] that the grounds of refusal by superintendents to permit access to patients should be entered in the case-book and communicated to the Commissioners in Lunacy, and to this proposal the Commissioners in their 33rd Annual Report[4] stated that they saw no objection. "Other person." Grounds of refusal.

(2) The order of admission may be either for a single admission, or for an admission for a limited number of times, or for admission generally at all reasonable times, (Conditions of admission.)

[1] See some interesting observations on visits and communications to prisoners in the Report of the Depart. Comm. on Prisons, 1895, c. 7702, par. 32.

[2] Report of Dillwyn Committee, 1878, Ans. 317.

[3] Report, p. vii.

[4] P. 137.

Sec. 47 (2), (3).

and with or without any restriction as to the presence of an attendant or otherwise.

This subsection re-enacts the second clause of sec. 85 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The order.—See preceding subsection and notes.

Any restriction.—An order may be refused altogether, or subjected to any restriction as to the presence of an attendant, the subjects of conversation, or otherwise. The object of this subsection is at once to secure the free right of access, which has proved to be so beneficial to patients, and to prevent its abuse. A case was mentioned to the Dillwyn Committee where a man applied for an order to see his step-mother, and it was refused, as it appeared that his object was to borrow money from her.[1]

Object of subsection.

Penalty for obstruction, etc.

(3) If the manager or principal officer of any institution or place refuses, prevents, or obstructs the admission to any patient of any person who produces an order of admission, he shall for every offence be liable to a penalty not exceeding twenty pounds.

This subsection re-enacts clause 3 of sec. 85 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The manager.—Definition of, sec. 341, *post.*

Institution.—Definition of, sec. 341, *post.*

Refuses.—The manager may refuse, if the application for admission is addressed to him in the first instance, on the ground of the patient's state of health or the improper motives or want of interest in the applicant. It is conceived that he might also refuse admission to a person holding an order from the Commissioners, and even, in extreme cases, having obtained the order after he himself had in the first instance refused admission, if at the time the applicant presented it the patient's state of health had become more critical, or fresh information with reference to the applicant had come to his knowledge.

Sec. 330, *post*, would be available for the protection of any person against whom criminal proceedings were taken under this subsection.

A penalty.—As to prosecutions and recovery of penalties, see secs. 325-329, *post.*

Power to appoint substitute for the person who applied for reception order. (Act of 1889, s. 37, subs. (1).)

48. (1) The Commissioners may by order substitute for the person upon whose petition a reception order was made, and either during the life of such person or after his death, any other person who is willing to undertake the duties and responsibilities of the petitioner.

[1] Report of 1878, Ans. 315.

Sec. 48 (1), (2).

Object of subsection.

This section re-enacts sec. 37 of the Lunacy Act 1889, which was passed to give effect to the recommendation of the Dillwyn Committee, 1878,[1] that "power might advantageously be given to the Board to direct the substitution for the person signing the order of any other suitable person willing to accept the responsibility." The neglect of patients by their friends was the reason for the enactment of this provision and also of the provision in sec. 6, subs. (3) (*ante*, where the matter is discussed), requiring the petitioner to visit the patient.

The Commissioners.—Definition of, sec. 341, *post.*

Order under seal.

Order.—The order must be under the seal of the Commission, sec. 152, subs. (1), *post.* As to reception in evidence of such orders, sec. 152, subs. (2), *post.* As to procedure where order is made without consent of petitioner, see subss. (4), (6), *inf.*

Substitute.—The petitioner is not released by the substitution from liabilities already incurred, subs. (3), *inf.*

No substitution for substitute.

The person.—There cannot apparently be a substitution for the substitute under this section.

Petition . . . reception order.—See secs. 4, 5, *et seq.*, and notes thereon, *ante.*

The duties and responsibilities.—The only statutory duty resting on the petitioner is to visit the patient, sec. 5, subs. (3), *ante.*

(Position of substitute. Act of 1889, s. 37, subs. (2).)

(2) As from the date of an order by the Commissioners under this section the substituted person shall be subject to all the obligations and may exercise all the powers and authorities in relation to the patient of the person for whom he is substituted.

This subsection re-enacts, sec. 37, subs. (2) of the Act of 1889.

An order by the Commissioners.—See notes to preceding subsections.

The obligation.—See note to "the duties," etc., *sup.*

All the powers and authorities.—These are (1) the right to visit, sec. 5, subs. (3), *ante;* (2) the right to discharge, sec. 72 (a substitution by the Commissioners will exclude in regard to the discharge of patients the right of the persons enabled by sec. 72, subs. (2), *post*, to exercise that right where the original petitioner is incapable of doing so; if the Commissioners cannot find any one able or willing to act, they may themselves order the discharge, sec. 72, subs. (3), *post;* (3) the right to receive letters from the patient unopened, sec. 41, subs. (1), *ante;* (4) the right to remove a private patient with Commissioners' consent, sec. 58, *post;* (5) the right to notice of order for discharge by Commissioners, sec. 76, subs. (1) (*a*), *post.*

[1] P. iv., and cp. 33rd Annual Report of Commissioners in Lunacy, p. 137.

Sec. 48 (3)-(5).

(3) The substitution shall not release the petitioner or his estate from any liabilities already incurred by him.

(Petitioner or estate not released from liabilities incurred. Act of 1889, s.37, subs. (3).)

This subsection re-enacts sec. 37, subs. (3) of the Lunacy Act 1889.

The substitution.—See notes to subss. (1) and (2).

Any liabilities.—A petitioner or his substitute is not liable to prosecution for failure to visit a patient, under sec. 5, subs. (3), *ante*.[1] The check on the original petitioner is the power of substitution. But there is no such check on the substitute, as the Commissioners cannot, it is submitted, order a second substitution, under sec. 1. This is a matter in regard to which the law might with advantage be amended.

(Order may be made with or without consent of petitioner. Act of 1889, s.37, subs.(4).)

(4) An order under this section may be made with or without the consent of the petitioner, but in the last-mentioned case the order shall not be made during his life until fourteen days after the Commissioners have given to him notice in writing of their intention to take into consideration the advisability of making an order under this section and of the name of the person proposed to be substituted.

This subsection re-enacts sec. 37, subs. (4) of the Lunacy Act 1889.

An order.—See notes to subs. (1).

The Commissioners.—Definition of, sec. 341, *post*.

"Days."

Days.—"Days" means all days. The day of the Commissioners' notice is excluded, *ante* p. 118.

Take into consideration.—The petitioner may make a written or oral statement in opposition to the substitution, subs. (5), *inf*.

(Objection to substitution by petitioner. Act of 1889, s.37, subs.(5).)

(5) Within fourteen days after receipt of the notice the person to whom the notice is given may lay before the Commissioners a statement in writing of his reasons why an order under this section should not be made, or he may appear in person before the Commissioners at such time and place and subject to such restrictions as the Commissioners may appoint for the purpose of stating such reasons. The Commissioners shall, upon consideration of such statement, or, if no statement is made, at their own discretion, finally

[1] Cp. 33rd Annual Report of Commissioners in Lunacy, p. 130.

determine the matter, and make or decline to make the order, as they may think fit. Sec. 48 (5), (6).

This subsection re-enacts sec. 37, subs. (5) of the Lunacy Act 1889.

Days.—"Days" means all days. The day of the receipt of the notice is excluded. See note to subs. (4), *sup.* "Days."

The notice.—See subs. (4), *sup.*

Lay before the Commissioners.—Communications to the Commissioners are to be addressed to the Secretary, Commissioners in Lunacy, 19 Whitehall Place, London, S.W.

(6) A notice under this section may be sent by post to the last known address of the petitioner. (Notice, how and where to be sent. Act of 1889, s. 37, subs. (6).)

This subsection re-enacts sec. 37, subs. (6) of the Lunacy Act 1889.

By post.—The petitioner will be deemed to have received the notice at the time when it would in the ordinary course of post be delivered to him, (Interpretation Act 1889, 52 & 53 Vict. c. 63, sec. 26).

49. An order for the examination by two medical practitioners, authorised by the Commissioners, of any person detained as a lunatic in any institution for lunatics, or as a single patient, may be obtained from the Commissioners upon the application of any person, whether a relative or friend or not, who satisfies the Commissioners that it is proper for them to grant such order; and on production to the Commissioners of the certificates of the medical practitioners so authorised, certifying that after two separate examinations with at least seven days intervening between the first and the second examination, they are of opinion that the patient may, without risk or injury to himself or the public, be discharged, the Commissioners may order the patient to be discharged at the expiration of ten days from the date of the order. Provision for any person to apply to have patient examined. (Act of 1889, sec. 38).

This section re-enacts sec. 38 of the Lunacy Act of 1889, which was passed to give effect to the recommendation of the Dillwyn Origin of section.

Sec. 49.

Committee, 1878,[1] that, adopting the Scotch practice, the Legislature should provide that any person might, with the sanction of the Commissioners, on showing good cause for the step, send two medical men at any time to test the condition of any patient under restraint. The Commissioners in Lunacy[2] thought that this power already existed.

An order.—It must be under the seal of the Commission, sec. 152, subs. (1), *post.*

Medical practitioners.—Definition of, sec. 341, *post.*

Authorised.—The applicant may suggest them.

The Commissioners.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Single patient.—As to reception of, see sec. 5, *ante.*

Relative.—Definition of, sec. 341, *post.*

Certificates.—As to requirements of, sec. 28, *ante.*

Inquiries as to property.

50. (1) Where any person is detained as a lunatic and the Commissioners represent to the Lord Chancellor that it is desirable that the extent and nature of his property, and its application, should be ascertained, the Lord Chancellor may, if he think fit, through the Masters, require that the person upon whose petition the reception order under which the lunatic is detained was made, or other the person paying for the care and maintenance of the lunatic or having the management of his property, shall transmit to the Lord Chancellor a statement in writing, to the best of his knowledge, of the particulars of the property of the lunatic and of its application.

This subsection re-enacts sec. 23 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

Lunatic.—Definition of, sec. 341, *post.*

The Commissioners.—Definition of, sec. 341, *post.*

Inquiries by Lord Chancellor.

The Lord Chancellor.—The Lord Chancellor means the Lord High Chancellor of Great Britain for the time being, and when used with reference to Ireland only, the Lord Chancellor of Ireland for the time being (Interpretation Act 1889, 52 & 53 Vict. c. 63, sec. 12).

Inquisition may be ordered on report of Commissioners.

Property.—Definition of, sec. 341, *post.* The Commissioners may themselves make inquiries as to the property of a lunatic, subs. (2), *inf.*, and an inquisition may be ordered on their report stating that

[1] P. v.

[2] 33rd Annual Report, p. 136.

it is not duly protected or that the income is not duly applied for the lunatic's benefit, sec. 100, *post*.

The Masters.—Definition of, sec. 341, *post*.

Appointment, etc., of, sec. 111, *post*.

The person, etc.—As to person presenting petition, see sec. 5, subs. (1), *ante*. If there has been a substitution by the Commissioners under sec. 48, subs. (1), *ante*, of another person for the original petitioner, the substitute may be called upon for information under this subsection. See sec. 48, subs. (2), *ante*.

(Inquiries by Commissioners.)

(2) The Commissioners may also, whenever they think it expedient, make inquiries as to the property of any person detained as a lunatic.

This subsection re-enacts sec. 94 of the Lunacy Act 1845 (8 & 9 Vict. c. 100). See notes to preceding subsection, and see circular of Commissioners as to dealing with property of lunatics, Appx. *post*.

Power for a Commissioner or visitor to direct a search whether a particular person has been confined.

51. (1) If any person applies to a Commissioner in order to be informed whether any particular patient is confined in any institution for lunatics, or other place subject to the visitation of the Commissioners, the Commissioner, if he thinks fit, may sign an order to the secretary of the Commissioners, who shall search amongst the returns made to the Commissioners, whether the person inquired after is or has been within the last twelve months confined.

This subsection re-enacts the first clause of sec. 84 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

A Commissioner.—Definition of, sec. 341, *post*.

Institution for lunatics.—Definition of, sec. 341, *post*.

Other place.—See secs. 198-200, *post*; sec. 205, *post*; sec. 206, *post*.

The visitation.—As to visitation by Commissioners, see secs. 187, *post*, *et seq.*

An order.—The order need *only* be signed, see sec. 152, subs. (1), *post*.

The secretary.—See secs. 154, *post*, *et seq.*, as to appointment and duties of secretary.

The returns.—As to these, see notes to Rules of Commissioners, 1895, *post*.

(2) If it appears that the patient is or has been so confined, the secretary shall deliver to the applicant a

Sec. 51 (2), (3).

(Statement in writing by secretary to Commissioners.)

statement in writing, specifying the situation of the institution or place in which the patient appears to be or to have been confined, and also (so far as the secretary can ascertain the same from any register or return in his possession) the name of the manager or principal officer of the institution or place, and the date of admission, and (in case of the patient's removal or discharge) the date of his removal or discharge.

This subsection re-enacts the second clause of sec. 84 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

So confined.—See subs. (1), *sup.*

The secretary.—See subs. (1), *sup.*, and as to appointment and duties of secretary, see sec. 154, *post.*

A statement in writing.—If the applicant desires admission to the patient, and the manager of the institution or place of confinement refuses it, he may obtain an order from the Commissioners if he can bring himself within sec. 47, subs. (1), *ante*, *i.e.* if he is either a relation or a friend, or a person whom a relation or friend desires to be admitted; otherwise *habeas corpus* is the only available remedy.

The institution.—Definition of, sec. 341, *post.*

Place.—See notes to subs. (1), *sup.*

Register.—As to the registers kept in institutions for lunatics see Rules of Commissioners, 1895, rr. 1 *et seq.*, *post.*

Return.—Cp. Rules of Commissioners, 1895, *post.*

Manager.—Definition of, sec. 341, *post.*

Removal.—As to removal of lunatics, see secs. 58 *et seq.*, *post.*

Discharge.—As to discharge of patients, see secs. 72-82, *post.*

(Application to visitors.)

(3) If any such application is made to a visitor as to any licensed house within his jurisdiction, the visitor may make the like order upon the clerk to the visitors, who shall make search among the returns made to him, and deliver to the applicant the like statement as to any such licensed house as the secretary of the Commissioners is by this section required to make and deliver.

This subsection re-enacts sec. 83 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Such application.—See subs. (1).

A visitor.—As to visitors of licensed houses, see sec. 177, *post.*

The like order.—See subs. (1), *sup.*

The clerk to the visitors.—As to duties and remuneration of, see sec. 178, *post.*

Returns.—As to returns made to the clerk to the visitors, see Rules of Commissioners, 1895, rr. 25, 26, *post.*

The like statement.—See subs. (1), *sup.*

Sec. 51 (3), (4).

(4) The applicant shall pay to the person required to make a search under this section such sum, not exceeding seven shillings, as the Commissioners or visitors fix.

(Fees payable.)

This subsection is based upon secs. 83 and 84 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The person required, viz. the secretary to the Commissioners, subs. (1), *sup.*, or the clerk to the visitors, subs. (3), *sup.* As to the application of fees received by clerks of the peace, see sec. 224, *post*, and sec. 225, *post.*

The fees paid under this section do not form part of the salaries of the secretary to the Commissioners or the clerk to the visitors.

Not part of salary of secretary or clerk to visitors.

52. (1) The visiting Commissioners may determine and regulate the diet of the pauper patients in any hospital or licensed house.

Diet of patients.

This section re-enacts sec. 82 of the Lunacy Act 1845 (8 & 9 Vict. c. 100). The section is confined to pauper patients, as it was in their case only that there was serious danger of abuse. Cp. the Report of 1859, Ans. 401-407, for some observations by Lord Shaftesbury on this subject, and see also Ans. 1548.

Visiting Commissioners.—As to visitation of hospitals and licensed houses by Commissioners, see sec. 191, *post.*

Pauper patients.—Definition of pauper, sec. 341, *post.*

Hospital.—Definition of, sec. 341, *post.*

Licensed house.—As to powers of visitors in regard to, see subs. (2), *inf.*

(2) The visitors of a licensed house shall have the like power as to that house, subject, nevertheless, to any direction the visiting Commissioners may give.

(Powers of visitors of licensed houses.)

Visitors.—As to visitors of licensed houses, see sec. 177, *post.*

The visiting Commissioners and visitors, at any visit which they are required to make to a hospital or licensed house, shall, and any one or more of such Commissioners or visitors at any other visit may, inquire as to the diet of the pauper patients, sec. 194 (*f*), *post.*

As to duty of master of workhouse to keep a book for observations by Commissioners as to diet, etc., see sec. 54, *post.*

Sec. 53.

Males not to be employed in personal custody of females. (Act of 1889, sec. 83.)

53. It shall not be lawful to employ any male person in any institution for lunatics in the personal custody or restraint of any female patient, and any person employing a male person contrary to this section shall be liable to a penalty not exceeding twenty pounds. Provided that this section shall not extend to prohibit or impose a penalty on the employment of male persons on such occasions of urgency as may in the judgment of the manager of the institution render such employment necessary, but the manager shall in each case report the employment to the visiting Commissioners or visitors at their next visit.

This section re-enacts sec. 83 of the Lunacy Act 1889.

Males why formerly employed in custody of females.

Considerable abuses seem to have resulted in former times from the employment of male attendants in the custody of females.[1] In so far as the practice rested on any principle at all, it was probably due to the alleged injurious moral and physical results to females of attendance on the insane.[2]

Institution for lunatics.—Definition of, sec. 341, *post.* The section does not apply to single patients or (?) to a workhouse or an asylum provided by the Managers of the Metropolitan Asylum District.

"Personal custody or restraint."

The personal custody or restraint.—The section does not seem to prohibit the employment of male attendants in duties relating to female patients, but unconnected with their personal custody or restraint; *e.g.* there would not appear to be anything to prevent a male warder from keeping the keys of the female wards in an asylum.

Application of section.

It is conceived, however, that the section applies to the transfer from, or removal to, an institution for lunatics, unless the employment of a male attendant can be justified under the exception of urgency.

As to restraint of patients, see sec. 40, *ante.*

Penalty.

A penalty.—As to recovery of penalties, see secs. 325, 326, 328, 329, *post.*

Evidence necessary to avoid.

As to protection of person acting in good faith, see sec. 330, *post.* To avoid a penalty under this section proof will be necessary that the person against whom the proceedings are taken had reasonable ground to regard the case as one of urgency, and reported it to the Commissioners or visitors at their first visit.

As to punishment for abuse or attempted abuse of any female patient, see sec. 324, *post.*

"Occasions of urgency."

Occasions of urgency.—The necessity for the restraint of the patient will be the chief "occasion of urgency." But the words would cover

[1] Cp. Parliamentary Debates, 1816, vol. 34, p. 1127; speech by Lord R. Seymour, p. 1127, June 17; and History of York Lunatic Asylum, by Jonathan Gray, p. 6.

[2] Cp. Report of 1859, Ans. 384.

any exceptional circumstances which would induce a reasonable person to employ male assistance.

The judgment of the manager.—Definition of manager, sec. 341, *post.* The judgment must, however, be a reasonable one. The standards of the law are external standards.[1]

The institution.—Definition of, sec. 341, *post.*

Report.—An oral report is sufficient in cases of personal custody. In cases of personal restraint, the circumstances must also be recorded in the Register of Mechanical Restraint, see sec. 40, subss. (2)-(7), *ante.* Report by manager.

The visiting Commissioners.—Definition of Commissioners, sec. 341, *post.* As to visits by, see sec. 187, *post.*

Visitors.—As to visitation of asylum by visitors, see sec. 188.

As to visitation of hospital by visitors, see sec. 269, subs. (10).

As to visitation of licensed house by visitors, see sec. 269, subs. (10).

54. (1) The visiting guardians of every union shall, once at least in each quarter, enter in a book to be provided and kept by the master of the workhouse, such observations as they may think fit to make respecting the diet, accommodation, and treatment of the lunatics or alleged lunatics in the workhouse. Book to be kept in workhouse.

This section re-enacts sec. 37 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111).

Visiting guardians.—Definition of guardians, sec. 341, *post.*

Union.—Definition of, sec. 341, *post.*

Workhouse.—Definition of, sec. 341, *post.*

Diet.—As to powers of Commissioners and visitors in regard to diet, see sec. 32, *ante.*

Accommodation.—As to certificates of medical officer with regard to, see secs. 24 and 25, *ante.*

Lunatics.—Definition of, sec. 341, *post.*

Alleged lunatics.—As to removal of alleged lunatics to workhouses in urgent cases, see sec. 20, *ante.*

Query whether it applies to an asylum for imbeciles provided by the Managers of the Metropolitan Asylum District. Application of section.

(2) Such book shall be laid by the master before the Commissioner or Commissioners at his or their next visit. (Book to be laid before Commissioners.)

Such book.—See notes to preceding subsection. The certificates of the medical officer under sec. 24 should also be preserved and laid before the Commissioners.

[1] Cp. O. W. Holmes on the Common Law, p. 108.

Sec. 55 (1), (2).

Absence on trial or for health.

55. (1) Any two visitors of an asylum, with the advice in writing of the medical officer, may permit a patient in the asylum to be absent on trial so long as they think fit.

This subsection re-enacts in substance part of sec. 79 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Visitors.—As to visitors of asylums, see sec. 198, *post.*

Asylum.—Definition of, sec. 341, *post.* As to hospitals and licensed houses, see subs. (3), *inf.*

Advice in writing.—The recommendation of the medical officer must accompany the application for leave of absence of private patient. Cp. Rules of the Commissioners in Lunacy, 1895, r. 19 (2), *post.*

Medical officer.—Definition of, sec. 341, *post.* As to power of medical officer of hospital or licensed house to permit absence on leave, see subs. (7), *inf.*

Absent on trial.—Under the Lunatic Asylums Act 1853, *ubi sup.*, there was no power to permit the absence on trial of patients in hospitals or licensed houses, see subs. (3), *inf.* As to change of residence of single patients, see sec. 56, *post.*

Duration of leave.

So long as they think fit.—In practice the leave would not be continued indefinitely. Either the person is brought back to the asylum, as in a hopeless case, or he is discharged.[1] The authority under which a patient was sent to an asylum does not need to be renewed during his absence on trial, although the ordinary time for its expiration arrives, see sec. 37, subs. (2), *ante;* and if he does not return at the expiration of his leave, he may be retaken, as in the case of an escape, see subs. (8), *inf.*

(Allowance to pauper lunatics.)

(2) The visitors may make an allowance to a pauper lunatic absent from the asylum on trial, not exceeding the charge in the asylum, and that allowance, and no more, shall be paid for him as if he were in the asylum.

This subsection re-enacts in substance part of sec. 79 of the Lunatic Asylums Act 1853 (16 and 17 Vict. c. 97).

The visitors.—As to visitors, see sec. 198, *post.* The Commissioners have a similar power, see subs. (6), *inf.*

An allowance . . . not exceeding the charge in the asylum.—As to charges for pauper lunatics, see sec. 283, *post.*

Pauper.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Absent on trial.—See subss. (1), *sup.*, and (6), *inf.* As to absence of private patients, see subss. (3), (5), (7).

Asylum.—Definition of, sec. 341, *post.*

[1] Cp. Report of 1859, Ans. 245.

(3) The manager of any hospital or licensed house may, with such consent as hereinafter mentioned,— Sec. 55 (3).

This subsection is founded on the statutes indicated in the margin. (8 & 9 Vict. c. 100, sec. 86; 18 & 19 Vict. c. 105, sec. 17; 25 & 26 Vict. c. 111, sec. 38; Lunacy Act 1889, sec. 32.

Manager.—Definition of, sec. 341, *post.*

Hospital.—Definition of, sec. 341, *post.*

Licensed house.—As to licensed houses, see sec. 207, *post.*

Such consent.—See subss. (4) and (5), *inf.*

(*a*) send or take, under proper control, any private patient, or two or more private patients, to any specified place, **or to travel in England,** for such period as may be thought fit for the benefit of his or their health. Powers of manager of hospital or licensed house. (May send patients to specified place or to travel in England.) Lunacy Act 1891, sec. 9, subs. (1).

Proper control.—*Semble*, the prohibition of the employment of males in the personal custody or restraint of females, sec. 53, *ante*, would apply to the sending or taking of, or detention of, a private patient under this subsection.

Private patient.—Definition of, sec. 341, *post.*

Specified place.—The place may be varied, see subs. (4), *inf.*

Or to travel in England.—These words were added by sec. 9, subs. (1), of the Act of 1891, *post.*

Health.—Before the enactment of sec. 38 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111) patients in hospitals and licensed houses could not be temporarily discharged *on trial*, although something was done towards this end indirectly, see note to clause (*b*), *inf.* The authority under which the patient is detained remains in force during absence, see sec. 37, subs. (2), *ante;* and the patient may be recaptured, see subs. (8), *inf.*

(*b*) permit a private patient to be absent upon trial for such period as may be thought fit. (May permit absence on trial.)

This clause re-enacts in substance sec. 38 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111). The state of things prior to that enactment was thus described by the Earl of Shaftesbury in his evidence before the Select Committee of 1859:[1] "We (*i.e.* the Commissioners in Lunacy) can sanction a removal for health, but then it must be for health and to some assigned place; but we frequently recommend relatives and friends to take parties out upon trial, thereby somewhat straining the Act. . . . The certificate holds good. It is not necessary to have (the patients) re-certificated. This Origin of clause.

[1] Ans. 242.

Sec. 55 (3)-(5).

is a great inducement to the relatives, as the certificate gives them power to bring the patients back in case they should not improve or become worse."

Private patient.—Definition of, sec. 341, *post.*

As to release of patients from asylums, see subss. (1) and (2) *sup.*

As to release of patients from asylums by authority of Commissioners, see subs. (7).

As to release of patients from asylums by authority of medical officer, see subs. (7).

Absent on trial.—See general note to this subsection. The leave of absence will not be renewed indefinitely, see notes to subs. (1), *sup.* As to failure of patient to return on expiry of leave, see subs. (8), *inf.*

(Consent required by section.)

(4) The consent required by this section shall be either that of a Commissioner, or in the case of a hospital that of two members of the managing committee, or in the case of a house licensed by justices that of two of the visitors. Any such consent may be renewed, and the place when required to be specified varied.

Previous consent necessary.

The consent required by this section.—Strictly speaking, by this subs. *Previous* consent is required, although the word *previous* is not used.[1] As to consent in case of single patients, see sec. 56, subs. (3), *inf.*

Commissioner.—Definition of, sec. 341, *post.*

Hospital.—Definition of, sec. 341, *post.*

Licensed by justices.—As to licenses by justices, see sec. 208, subs. (2), *post.* Definition of justices, sec. 341, *post.*

Visitors.—As to visitation of licensed houses, see sec. 177, *post.*

Leave of absence not renewed indefinitely.

Renewed.—Leave of absence on trial will not be renewed indefinitely.

Variation of place.

When required to be specified.—See subs. (3) (*a*), *sup.*

Varied.—Under the old law, prior to the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111), sec. 38, leave of absence on trial could not be given, and leave of absence for health could only be given to a specified place. The recommendation of the medical officer must accompany (see notes to subs. (3) (*b*), *sup.*) application for consent, Rules of Commissioners in Lunacy, 1895, r. 19 (2), *post.*

(Consent of petitioner, etc.)

(5) Before such consent is given, the approval in writing of the person on whose petition the reception order was made, or by whom the last payment on account of the lunatic was made, shall be produced, unless the consenting persons, on cause being shown, dispense with the same.

[1] Cp. *re Gallard*, 1896, 1 Q.B. 68.

Sec. 55 (5), (6).

Before such consent.—As to consent, see subs. (4) *sup.* The recommendation of medical officer must accompany application for, Rules of Commissioners, 1895, r. 19 (2).

The person . . . made.—See sec. 5, subs. (1), *ante.*

Or by whom . . . made.—As to consent of substitute for original petitioner, see sec. 48, subs. (2), *ante.*

Lunatic.—Definition of, sec. 341, *post.* Subss. (3), (5), however, apply only to lunatics in hospitals or licensed houses.

The consenting persons.—See subs. (4), *sup.*

Cause being shown.—Unreasonable refusal, or physical inability, to approve would be sufficient cause.

(Absence of pauper lunatic.)

(6) A Commissioner as regards any hospital or licensed house, and two members of the managing committee of a hospital, and two of the visitors of a house [*licensed by visitors*] **licensed by justices,** may, of their own authority, permit a pauper patient to be absent upon trial for such period as may be thought proper, and may make or order to be made an allowance to the pauper, not exceeding the charge for him in the hospital or house, which shall be payable as if he were in the hospital or house, but shall be paid over to him or for his benefit as [*the Commissioners or visitors*] **such Commissioners or two visitors** may direct.

Lunacy Act 1891, s. 9, subs. (2).

Lunacy Act 1891, s. 9, subs. (2).

This subsection is based on part of sec. 38 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111), as amended by sec. 32, subs. (1) of the Lunacy Act 1889. Prior to the passing of the Act of 1862 neither the Commissioners nor the managing committee or visitors were able to discharge a pauper patient from a hospital or licensed house, making provision for his subsistence while the trial lasted,[1] although the visitors had this power in the case of patients in asylums under the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), sec. 79, and see subs. (2), *sup.*

A Commissioner.—Definition of, sec. 341, *post.*

Hospital.—Definition of, sec. 341, *post.*

Licensed house.—See sec. 177, *post.* As to grant of leave of absence from asylums, see subss. (1), (2), (6); hospitals or licensed houses by manager, subs. (3); and by medical officer (temporarily), subs. (7).

Visitors.—Definition of, sec. 177, *post.*

Words "licensed by visitors" why omitted.

Licensed by visitors.—These words were inserted in the Act of 1890 by mistake, as visitors have no power to grant licenses. They are repealed, and the words "licensed by justices" (as to which see sec. 208,

[1] Report of 1859, Ans. 245.

Sec. 55 (6)-(8).

subs. (2), *post*) were substituted for them, by sec. 9, subs. (2) of the Act of 1891, Appx. *post*.

Pauper.—Definition of, sec. 341, *post*.

Absent upon trial.—See notes to subs. (3) (*b*), *sup*.

Allowance . . . direct.—As to charges for pauper lunatics, see sec. 283, *post*.

Such Commissioners.—See note to *licensed by visitors*, *sup*.

(Power of medical officer to permit absence. Act of 1889, s. 32, subs. (2).)

(7) The medical officer of a hospital or licensed house may, of his own authority, permit any patient to be absent from the hospital or house for a period not exceeding forty-eight hours.

This subsection re-enacts sec. 32, subs. (2) of the Lunacy Act 1889.

The medical officer.—Definition of, sec. 341, *post*.

As to advice of medical officer of asylum in regard to temporary discharge of patient on trial, see subs. (1), *sup*.

Hospital.—Definition of, sec. 341, *post*.

Licensed house.—See sec. 177, *post*.

Absent.—The authority on which the patient is detained remains in force during absence, see sec. 37, subs. (2), *ante*.

(Recapture of patient on failure to return.)

(8) If a person allowed to be absent on trial for any period does not return at the expiration thereof, and a medical certificate certifying that his detention as a lunatic is no longer necessary is not sent to the visitors of the asylum or the manager of the hospital or house, he may at any time within fourteen days after the expiration of the period of trial be retaken as in the case of an escape.

This subsection extends the last clause of sec. 38 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111), which it re-enacts, to all patients allowed to be absent under this section.

Absent on trial.—See notes to preceding subsection.

A medical certificate.—No form for this particular certificate is prescribed. Form 13, Sched. ii., *post*, may be adapted.

Lunatic.—Definition of, sec. 341, *post*.

Visitors.—As to visitors of asylums, see sec. 198, *post*.

Asylum.—Definition of, sec. 341, *post*.

Manager.—Definition of, sec. 341, *post*.

Hospital.—Definition of, sec. 341, *post*.

House.—As to licensed houses, see sec. 207, *post*.

"Within fourteen days."

Within fourteen days.—"Days" means all days; the day of the expiration of the period of trial is excluded, *ante*, p. 200.

Escape.—As to recapture in cases of escape, see secs. 85-89, *post*.

56. (1) Any person having charge of a single patient may change his residence and remove the patient to any new residence of such person in England.

Sec. 56 (1)-(3).

Change of residence of single patients. (16 & 17 Vict. c. 96, sec. 22; Lunacy Act 1889, sec. 32.)

This subsection re-enacts the first clause of sec. 22 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

Single patient.—As to reception of, see sec. 4, subs. (1), *ante.*

Absence from asylums, hospitals, and licensed houses, see sec. 55, *ante*, and notes.

Change of residence.—This subsection provides merely for change of residence by the person having charge of the patient.

As to steps to be taken in such cases, see subs (2), *inf.*

As to taking or sending patient away for health, see subs. (3), *inf.*

(2) Seven clear days before a change of residence, the person having charge of a single patient shall give notice in writing thereof, and of the place of the new residence, to the Commissioners and to the person on whose petition the reception order was made, or by whom the last payment on account of the patient was made.

(Notice of.)

This subsection re-enacts the proviso to the first clause of sec. 22 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

Seven clear days.—The day on which the notice is given and that on which the patient is removed are excluded, see *ante* p. 182.

A change of residence.—See subs. (1).

Notice in writing.—As to penalty for failure to give notice, see sec. 320, *post.* As to sending notice after removal, see Rules of Commissioners in Lunacy, 1895, r. 23, *post.*

The Commissioners.—Definition of, sec. 341, *post.*

Communications to the Commissioners are to be directed to the Secretary, Commissioners in Lunacy, 19 Whitehall Place, London, S.W.

The person . . . made.—See sec. 5, subs. (1), *ante.*

Or by whom.—As to consent by substitute for original petitioner, see sec. 48, subs. (2), *ante.*

(3) Any person having charge of a single patient, with the previous consent of a Commissioner, may take or send the patient, under proper control, to any specified

(Absence on trial.)

Sec. 56 (3), (4).

Lunacy Act 1891, s. 10.

place or places, for any definite time, for the benefit of his health, **or permit the patient to be absent upon trial for such period as may be thought fit.**

This subsection re-enacts the second clause of sec. 22 of the Lunacy Act 1853 (16 & 17 Vict. c. 96), as amended by sec. 32, subs. (1) of the Lunacy Act 1889.

Single patient.—See notes to subs. (1).

Previous consent of Commissioner.

Previous consent.—The recommendation of the medical attendant must accompany application for consent, Rules of Commissioners in Lunacy, 1895, r. 19 (2), *post.*

As to approval of petitioner, see subs. (4), *inf.*

May take . . . health.—As to change of residence by person having charge of single patient, see subss. (1) and (2), *sup.*

As to absence from asylums, hospitals, and licensed houses, see sec. 55, *sup.*

The single patient can only be taken or sent away for a definite time.

Reason for enactment of sec. 10 of Act of 1891.

Prior to the passing of the Act of 1891, the temporary discharge on trial—as distinct from absence for health—was not provided for by this subsection. The omission is supplied by the words added to the subsection by sec. 10 of the Act of 1891.

(Previous approval of Commissioner necessary.)

(4) Before any consent by a Commissioner is given, the approval in writing of the person on whose petition the reception order was made, or by whom the last payment on account of the patient was made, shall be produced to the Commissioner, unless, on cause being shown, he dispenses with the same.

This subsection re-enacts the last proviso of sec. 22 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

Any consent.—See notes to subs. (3), *sup.*

Commissioner.—Definition of, sec. 341, *post.*

The approval in writing . . . same.—See subs. (5) of sec. 55, *sup.*, and subs. (2) of this section, *sup.*, and notes thereon.

Boarding-out Lunatics.

57. (1) Where application is made to the visiting committee of an asylum by any relative or friend of a pauper lunatic confined therein that he may be delivered

Sec. 57 (1).

Maintenance for pauper lunatics taken charge of by relatives (Act of 1889, s. 40, subs. (1).)

over to the custody of such relative or friend, the committee may, upon being satisfied that the application has been approved by the guardians of the union to which the lunatic is chargeable or the local authority liable for his maintenance, and, in case the proposed residence is outside the limits of such union or the area subject to such local authority, then also by a justice having jurisdiction in the place where the relative or friend resides, and that the lunatic will be properly taken care of, order the lunatic to be delivered over accordingly.

Boarding-out lunatics.

Boarding-out lunatics.—The boarding-out of lunatics is in Scotland not casual, but a regular part of the lunacy administration. An interesting paper containing the latest statistical information on this subject will be found in Tuke's *Dictionary of Psychological Medicine*, vol. i. p. 141, and see note to "Scotland" in sec. 2, *ante*.

Origin of subsection.

This subsection extends sec. 40, subs. (1) of the Lunacy Act 1889 to pauper lunatics for whose maintenance a local authority is liable. Section 40 of the Act of 1889 was passed in order to give effect to a suggestion contained in the Report of the Dillwyn Committee,[1] that a shorter term of detention would often suffice in pauper cases, if the power were extended of reimbursing out of the rates the friends to whom the patients may be sent for a portion of the expense of their maintenance, see subs. (2), *inf.* The Committee pointed out, however, that the system was open to abuse, and recommended that if the suggestion were adopted, the authorities should retain the names on their books, and exercise a careful supervision through a medical officer, see sec. 202, *post*.

Application.—As to power of justices or visitors to allow relation or friend to take charge of lunatic, see sec. 22, *ante*.

Visiting committee.—Definition of, sec. 341, *post*.

Asylum.—Definition of, sec. 341, *post*.

Relative.—Definition of, sec. 341, *post*.

Pauper.—Definition of, sec. 341, *post*.

The guardian.—Definition of, sec. 341, *post*; and see notes to subs. (3), *inf.*

The union.—Definition of, sec. 341, *post*.

Lunatic.—Definition of, sec. 341, *post*.

Chargeable.—As to chargeability of lunatic, see secs. 286-298, *post*.

The local authority.—Definition of, sec. 240. The corresponding section in the Act of 1889 did not contain this clause.

[1] 1878, p. v.

Sec. 57 (1)-(3).

As to adjudication of chargeability for pauper lunatic to local authority, see sec. 290, *post*.

A justice.—Definition of, sec. 341, *post*. The justice must have the jurisdiction indicated in the section.

Removal of lunatic back to asylum.

Delivered over.—Any two visitors may at any time make an order for the removal of the lunatic back to the asylum, if they think fit, see sec. 63, *post*.

(Payment by authority liable for maintenance. Act of 1889, s. 40, subs. (2).)

(2) Where any such order is made, the authority liable for the maintenance of the lunatic shall pay to the person to whom the lunatic is delivered such allowance for the maintenance of the lunatic, not exceeding the expenses which would be incurred on his account if he were in the asylum, as such authority on the recommendation of the visiting committee of the asylum from which the lunatic was delivered over thinks proper.

This subsection re-enacts sec. 40, subs. (2) of the Lunacy Act 1889.

Any such order.—See subs. (1), *ante*.

The authority.—See subs. (1), *ante*.

Liable.—As to chargeability for maintenance, see secs. 286-298, *post*.

Lunatic.—Definition of pauper lunatic, sec. 341, *post*.

The person to whom, etc.—See subs. (1).

Allowance.—As to allowances for maintenance, see secs. 283, 284, *post*; see also general note to subs. (1), *sup*.

Asylum.—Definition of, sec. 341, *post*.

Visiting committee.—Definition of, sec. 341, *post*.

As to duty of district medical officer to visit and report on cases of lunatics boarded-out, see sec. 202, *post*.

(Act of 1889, s. 40, subs. (5).

(3) For the purposes of section twenty-four, subsection (2) (*f*), of the Local Government Act 1888, a lunatic boarded-out by the authorities of any asylum shall be deemed to be a lunatic maintained in an asylum.

This subsection re-enacts sec. 40, subs. (5) of the Lunacy Act 1889.

Local Government Act 1888, s. 24, subs. (2) (*f*).

Section 24 (2) (*f*) of the Local Government Act 1888 (51 & 52 Vict. c. 41) provides that in substitution for local grants, the council of each county shall from time to time pay out of the county fund to the guardians of every poor law union wholly or partly in the county a sum equal to four shillings a week for each pauper lunatic chargeable to the union and maintained in an asylum, registered

hospital, or licensed house, for whom the net charge upon the guardians, after deducting any amount received by them for the maintenance of such lunatic from any source other than local rates, is equal to or exceeds four shillings a week throughout the period of maintenance for which the sum is so paid.[1] Sec. 58.

Boarded-out.—See subss. (1) and (2), *sup.*, and notes.

Asylum.—Definition of, sec. 341, *post.*

Shall be deemed to be, i.e. shall be taken conclusively to be for the purposes in question, see *ante* p. 138. "Shall be deemed to be."

Removal of Lunatics.

58. A person having authority to order the discharge of a private patient from an institution for lunatics, or of any single patient, may, with the previous consent in writing of a Commissioner, by order in writing direct the removal of the patient to any institution for lunatics or to the charge of any person named in the order. Removal of private patient by person authorised to discharge the patient (8 & 9 Vict. c. 100, sec. 72; 16 & 17 Vict. c. 96, secs. 17 and 20; 16 & 17 Vict. c. 97, sec. 86).

This section consolidates and re-enacts in substance the sections in the Lunacy Act of 1845 (8 & 9 Vict. c. 100), the Lunacy Act 1853 (16 & 17 Vict. c. 96), and the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97) respectively, noted in the margin.

Having authority.—As to person having authority, etc., see sec. 72, *post*, and notes thereon.

Discharge.—As to discharge of lunatic, see sec. 72, *post.*

Private patient.—Definition of, sec. 341, *post.*

Institution.—Definition of, sec. 341, *post.*

Lunatics.—Definition of, sec. 341, *post.*

Single patient.—As to reception of, see sec. 4, *ante.*

Previous consent.—As to form, etc. of such consent, see sec. 70, *post.* As to consent of Commissioners to temporary removal or discharge for health or on trial, see sec. 55, subs. (4), *ante*, sec. 56, subs. (4), *ante.*

Commissioner.—Definition of, sec. 341, *post.*

The removal.—As to removal for health or on trial, see secs. 55 and 56, *ante.*

As to entries and notices on removal, see Rules of the Commissioners in Lunacy, 1895, rr. 22 and 23, *post.*

59. (1) Any two Commissioners may by order direct the removal of a lunatic from an institution for lunatics to any other institution for lunatics. Removal of lunatics by Commissioners.

This subsection re-enacts in substance the first clause of sec. 82 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

[1] See 50th Report, Commissioners in Lunacy (1896).

Sec. 59 (1), (2). From institutions for lunatics.

Commissioners.—Definition of, sec. 341, *post.*

Order.—Sec. 82 of the Lunatic Asylums Act 1853 required the order of the Commissioners to be under seal.

This prescription is omitted from the present subsection, and the order need no longer be under seal, see sec. 151, subs. (1), *post.*

As to form, etc., of such order, see sec. 70, *post.*

The removal.—As to removal by person authorised to discharge, see sec. 58, *sup.*; by Commissioners, subss. (2), (3), *inf.*, and sec. 60, *post*; by guardians, secs. 61, 62, *post*; by visiting committee, secs. 63-67, *post*; by justice, sec. 68, *post*; by Secretary of State in case of alien, sec. 71, *post.*

As to removal orders, see sec. 70, *post.*

As to entries to be made and notices sent, see Rules of Commissioners in Lunacy, 1895, rr. 22 and 23, *post.*

Lunatic.—Definition of, sec. 341, *post.*

An institution for lunatics.—Definition of, sec. 341, *post.* As to institution to which a pauper lunatic may be removed, see sec. 69, *post.*

(Removal of single patient on death of person having charge of lunatic. Act of 1889, s. 31, subs. (2).)

(2) Upon the death of a person having charge of a single patient, the Commissioners may, upon the application of the person having authority to discharge the patient, or if he does not apply within seven days after the death, upon their own motion, direct the patient to be removed to the charge of a person named in the order.

Origin of subsection.

This subsection re-enacts the first part of sec. 31, subs. (2) of the Lunacy Act 1889. That provision was enacted in pursuance of a recommendation of the Commissioners in Lunacy (33rd Annual Report, p. 134, par. 7): "The death of a person in charge of a single patient, and the consequent requirement of a new order or authority ought not as at present to involve the procuring of fresh certificates." The Commissioners pointed out the hardship to persons of small means, and the unnecessary disturbance to the patient himself, occasioned by this requisition, and recommended that power to transfer the patient, but not without their previous consent, into the care of a substitute for the deceased should be given. It will be observed that the subsection goes further than the recommendation. A new order or authority is not required; and the Commissioners have power to direct the removal on their own motion.

A single patient, etc.—As to reception of, see sec. 4, *ante.*

The Commissioners.—Definition of, sec. 341, *post.*

The person having authority, etc.—See sec. 72, *post*, and sec. 48, subs. (2), *ante.*

Discharge.—As to discharge of patients, see sec. 72, *post.*

Sec. 59 (2), (3).

"Within seven days."

Within seven days.—"Days" means days in all. The day of the death is excluded, see *ante* p. 200.

Removed.—See notes to subs. (1), *sup.*

As to notices, etc., to be sent to Commissioners on reception of patient, see Rules of Commissioners in Lunacy, 1895, r. 7 (5), *post.*

The order.—The order must be under seal, sec. 151, subs. (1), *post.*

As to form of, see sec. 70, *post.*

(Removal from person having charge of him to other person or to institution. Act of 1889, s. 31, subs. (3).)

(3) Any two Commissioners may at any time by order direct the removal of a lunatic from the charge of any person under whose care he is as a single patient, to the charge of any other person or to any institution for lunatics.

This subsection re-enacts sec. 31, subs. (3) of the Lunacy Act 1889.

Commissioners.—Definition of, sec. 341, *post.*

Order.—The order need not be under seal, sec. 151, subs. (1), *post.*

As to form of, see sec. 70, *post.*

The removal.—See notes to subs. (1), *sup.*

Lunatic.—Definition of, sec. 341, *post.* As to entries, etc., on reception of patient, see Rules of Commissioners in Lunacy, 1895, r. 7, *post.*

Single patient.—As to reception of, sec. 4, subs. (1), *ante.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Removal of lunatic from workhouse by Commissioners.

60. (1) Where, upon the visitation of a workhouse by any two or more Commissioners, it appears to them that a lunatic or alleged lunatic therein is not a proper person to be allowed to remain in a workhouse, they may by order direct the lunatic to be removed to an institution for lunatics, and every such order shall have the same effect as a summary reception order.

This subsection re-enacts the first clause of sec. 31 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111).

The visitation.—As to visitation of workhouses by Commissioners, see sec. 203, *post.*

A workhouse.—Definition of, sec. 341, *post.*

Commissioners.—Definition of, sec. 341, *post.*

A lunatic.—Definition of, sec. 341, *post.*

Alleged lunatic.—As to temporary removal of alleged lunatic to workhouse, see sec. 20, *ante.*

A proper person, e.g. on account of the character of his insanity.

Sec. 60 (1), (2).

Order.—The order need not be under seal, sec. 151, subs. (1), *post.*

As to form of, see sec. 70, *post.*

As to appeal against, see subs. (2), *inf.*

Removed.—As to removal by person authorised to discharge, see sec. 58, *sup.*; by Commissioners, from one institution for lunatics to another, sec. 59, subs. (1), *sup.*; from one person to another on death of person having charge, sec. 59, subs. (2), *sup.*; from one person to another or to institution for lunatics, sec. 59, subs. (3), *sup.*; by guardians, secs. 61, 62, *post*; by visiting committee of asylums, secs. 63-67, *post*; by justice, sec. 68, *post.* As to removal of alien to his native country, see sec. 71, *post.* As to institution to which pauper lunatic may be removed, see sec. 69, *post.* As to entries and notices on reception of patient, see Rules of Commissioners in Lunacy, 1895, r. 7.

An institution for lunatics.—Definition of, sec. 341, *post.*

A summary reception order.—As to effect of, see secs. 13, subs. (3), 10, 16, *ante.*

(Appeal by guardians.)

(2) The guardians of the union to which the workhouse belongs may appeal against an order under this section within one month from the making thereof to a Secretary of State, who shall thereupon employ a Commissioner, not being one of the Commissioners who made the order, or some other person, to make a special visitation of the workhouse and to report to him upon the matter, and the decision of the Secretary of State upon such report shall be conclusive.

This subsection re-enacts the proviso in sec. 31 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111).

Guardians.—Definition of, sec. 341, *post.*

Union.—Definition of, sec. 341, *post.*

Workhouse.—Definition of, sec. 341, *post.*

Appeal.—As to appeals against orders generally, see secs. 301-313, *post.*

Order.—See notes to subs. (1), *sup.*

One month.—"Month" means calendar month, Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3. The appeal must be instituted within twenty-eight days from the date of the order, excluding that date. "Days" means all days, see *ante*, p. 200.

A Secretary of State.—Definition of, p. 169. In practice the Home Secretary.

A Commissioner.—Definition of, sec. 341, *post.*

Report.—As to protection of person making report, see sec. 330, *post.*

The decision.—The decision is communicated by letter to the guardians.

Removal of lunatic in a hospital or licensed house by guardians. Lunacy Act 1891, sec. 11.

61. (1) The authority liable for the maintenance of a pauper lunatic detained in an hospital or licensed house may make an order for the removal of the lunatic and may direct the mode of removal **to the workhouse of the union to which the lunatic is chargeable, or if the lunatic is chargeable to a county or borough, to the workhouse of the union from which he was sent to the hospital or licensed house.**

This subsection re-enacts in substance the first clause of sec. 74 of the Lunacy Act of 1845 (8 & 9 Vict. c. 100).

The authority liable. — As to chargeability of lunatic to local authority, see sec. 290, *post.* As to definition of, sec. 240, *post.*

Pauper.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Hospital.—Definition of, sec. 341, *post.*

Licensed house.—As to, see sec. 177, *post.*

An order.—As to form of, see sec. 70, *post.*

On production of a copy of the order or minute to the manager of the hospital or licensed house, he is to remove the lunatic or suffer him to be removed, subs. (2).

The removal.—As to removal by person having authority to discharge, see sec. 58, *ante;* by Commissioners, secs. 59 and 60, *ante;* by guardians from workhouse, sec. 62, *post;* by visiting committee, secs. 63-67, *post;* by a justice, sec. 68, *post;* by Secretary of State, of alien, sec. 71, *post.* As to removal orders, see sec. 70, *post.* As to restriction on institution to which paupers may be removed, see sec. 69, *post.*

The workhouse.—Definition of, sec. 341, *post.* The object of the addition to the subs. by sec. 11 of the Act of 1891, was to limit expressly the power of removal to removal to the workhouse.[1]

Union.—Definition of, sec. 341, *post.*

County.—Definition of, sec. 341, *post.*

(2) Upon production to the manager of the hospital or house of a copy of the order he shall forthwith remove the patient or suffer him to be removed.

This subsection re-enacts the second clause of sec. 74 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

[1] The Commissioners in Lunacy, in their 45th Report, strongly condemned the practice of receiving pauper lunatics in registered hospitals.

Sec. 62.

Manager.—Definition of, sec. 341, *post.*
Hospital.—Definition of, sec. 341, *post.*
House, i.e. licensed house, as to which, see sec. 177, *post.*
Order.—See notes to subs. (1), *sup.*
Remove.—See notes to subs. (1), *sup.* As to entries and notices on removal, see Rules of Commissioners in Lunacy, 1895, rr. 22 and 23, *post.*

Removal from workhouse by guardians. (Act of 1889, s. 21, subs. (9).)

62. *The guardians of the union to which a workhouse belongs may make an order for the removal of any lunatic detained therein.*

Repealed by Act of 1891, sec. 29 and Sched.

This section re-enacted sec. 21, subs. (9) of the Lunacy Act 1889, as regards removal, but was repealed by sec. 29 and Sched. of the Act of 1891, as conflicting with sec. 24, subs. (3) of that statute, *ante.*

Guardians.—Definition of, sec. 341, *post.*
Union.—Definition of, sec. 341, *post.*
Workhouse.—Definition of, sec. 341, *post.*

No order of justices necessary.

Order.—As to form of order, see sec. 70, subss. (1) and (4), *post.* No order of justices was necessary for the purposes of this section or is for that of sec. 81, *post*, under which the guardians may order any person detained in the workhouse as a lunatic to be discharged therefrom.

Removal.—See notes to sec. 61, subs. (1), *ante.*

Removal of lunatic boarded-out into asylum. (Act of 1889, s. 40, subs. (4).)

63. Where the visiting committee of an asylum has made an order for a pauper lunatic in the asylum to be delivered to the custody of a relative or friend, any two members of the committee may at any time, if they think fit, order the lunatic to be removed to the asylum.

This section re-enacts sec. 40, subs. (4) of the Lunacy Act 1889.
Visiting committee.—Definition of, sec. 341, *post.* Appointment of, sec. 170, *post.*
Asylum.—Definition of, sec. 341, *post.*
Order . . . friend.—As to boarding-out pauper lunatics, see sec. 57, *ante.*
Pauper.—Definition of, sec. 341, *post.*
Lunatic.—Definition of, sec. 341, *post.*
Removed.—See note to "removed" in sec. 60, subs. (1), *ante.*
Asylum.—Definition of, sec. 341, *post.*

64. Any two visitors of an asylum may order a pauper lunatic chargeable to any union within any county or

borough to which the asylum wholly or in part belongs, or to such county or to any county for the reception of the pauper lunatics whereof into that asylum there is a subsisting contract, to be removed to that asylum from any other institution for lunatics in which he may be detained.

Sec. 64.

Removal of pauper into county asylum (16 & 17 Vict. c. 97, sec. 77; 18 & 19 Vict. c. 105, sec. 8; Lunacy Act 1889, sec. 41).

This section re-enacts the substance of the sections noted in the margin.

Visitors.—As to visitors of asylum, see sec. 188, *post.*

Asylum.—Definition of, sec. 341, *post.*

Order.—As to execution of order, see sec. 66, *post.*

As to form, etc., of order, see sec. 70, *post.*

As to medical certificate necessary, sec. 67, *post.*

Pauper.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Chargeable.—As to chargeability of pauper lunatic, see sec. 286, *post.*

Union.—Definition of, sec. 341, *post.*

County.—Definition of, sec. 341, *post.*

A subsisting contract.—As to such contracts, see secs. 243, 269, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

As to restrictions on institution to which lunatics may be sent, see sec. 69, *post;* entries and notices on removal, see Rules of the Commissioners in Lunacy, 1895, rr. 22 and 23, *post.*

65. (1) Any two visitors of an asylum may order a pauper lunatic in the asylum to be removed to some other institution for lunatics.

Removal of pauper from asylum.

This section re-enacts the second part of sec. 77 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as amended by sec. 41 of the Lunacy Act 1889.

Visitors.—As to visitors of asylum, see sec. 188, *post.*

Asylum.—Definition of, sec. 341, *post.*

Order.—As to execution of order, see sec. 67, *post.*

As to form, etc., of order, see sec. 67, *post.*

Pauper.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Removed.—As to medical certificate necessary before removal, sec. 67, *post.*

As to removal of private patient by person having authority to discharge, see sec. 58, *ante;* by Commissioners, see secs. 59 and 60, *ante;* by guardians, see secs. 61 and 62, *ante;* by visiting committee, see sec. 63, *ante;* by a justice, see sec. 68, *post;* by Secretary of State, of alien, see sec. 71, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Sec. 65 (2).

As to restriction on institution to which paupers may be sent, see sec. 69, *post*.

(Consent of Commissioners, when necessary.)

(2) A lunatic shall not be removed under this section without the consent in writing of two Commissioners, except to—

See notes to preceding subsection.

Consent.—In case of removal of private patient, the consent of one Commissioner is sufficient, see sec. 58, *ante*.

As to form, etc., of consent, see sec. 70, *post*.

Commissioners.—Definition of, sec. 341, *post*.

As to removal of lunatics by order of Commissioners, see secs. 59 and 60, *ante*.

(Asylum belonging to county.)

(*a*) An asylum within or belonging wholly or in part to the county within which the asylum from which the lunatic is removed is situate, or to the county in some parish of which the lunatic may have been adjudged to be settled; or

Asylum.—Definition of, sec. 341, *post*.

County.—Definition of, sec. 341, *post*.

Adjudged.—As to adjudication of settlement, see secs. 288, 289, *post*.

(Hospital or licensed house within county.)

(*b*) A hospital or licensed house within any such county as aforesaid; or

Hospital.—Definition of, sec. 341, *post*.

Licensed house.—As to licensed houses, see sec. 177, *post*.

County.—Definition of, sec. 341, *post*.

(Institution for lunatics under reception contract.)

(*c*) An institution for lunatics into which the lunatic can be received under a subsisting contract.

Institution for lunatics.—Definition of, sec. 341, *post*.

Lunatic.—Definition of, sec. 341, *post*.

Subsisting contract.—As to such contracts, see secs. 243 and 269, *post*.

Directions as to execution of order for removal.

66. The visitors making an order for the removal of a pauper lunatic may by the order require any relieving officer, or other officer of the union, county, or borough to

which the lunatic is chargeable, or may authorise any other person, to execute the same. Sec. 66.

This section re-enacts the third clause of sec. 77 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

The visitors . . . lunatic.—See sec. 64, *ante.*

Pauper.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

By the order require.—The order is a sufficient authority for the removal, whether by the relieving officer or by any other person, see sec. 70, subs. (2), *post;* and as to protection of persons putting the Act in force, see sec. 330, *post.* The order a sufficient authority.

Union.—Definition of, sec. 341, *post.*

County.—Definition of, sec. 341, *post.*

Chargeable.—As to chargeability of lunatic, see sec. 286, *post.*

Authorise.—Whether the relieving officer is named in the order or not. The authority need not be written. Query whether the relieving officer can be compelled to execute the order. It would seem that the relieving or other officer cannot be either required or authorised except by the order.

67. A pauper lunatic shall not be removed under any order for removal made by two visitors without a medical certificate signed by the medical officer of the institution for lunatics from which the patient is to be removed, certifying that he is in a fit condition of bodily health to be removed. Restriction upon removal of paupers by two visitors.

This section re-enacts the proviso to sec. 77 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Pauper.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Any order for removal.—The restriction applies therefore to removals under both secs. 64 and 65, *ante.*

Visitors.—See sec. 64, *ante.*

A medical certificate.—No form is given. Form 13, Sched. ii., *post,* may be adapted.

Wilful misstatement in, a misdemeanour, sec. 317, subs. (2), *post.*

Protection of person making, sec. 330, *post.*

Medical officer.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

68. Where a union is in more than one county, and the workhouse of the union is in one county, and the place

Sec. 68.

Removal of lunatic from workhouse by justice. (Act of 1889, s. 76, subs. (1).)

from which a lunatic was sent to the workhouse is in another county, an order may be made by a justice for the county in which the workhouse is, or a justice for the county from which the lunatic was sent, for the removal of the lunatic either to the asylum of the county in which the workhouse is or to the asylum of the county from which the lunatic was sent, and such latter order may be made notwithstanding that there may be an asylum of the county in which the workhouse is, and there may not be a deficiency of room or any other special circumstances by reason whereof the lunatic cannot conveniently be taken to that asylum.

This section re-enacts sec. 76, subs. (1) of the Lunacy Act 1889.

A union.—Definition of, sec. 341, *post.*

County.—Definition of, sec. 341, *post.*

Workhouse.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Order.—As to form, etc., of, see sec. 70, *post.*

Justice.—Definition of, sec. 341, *post.*

Object and scope of section.

Such later order . . . asylum.—But for the provision of this section, a pauper lunatic could not be sent elsewhere than to an asylum of the county in which the place from which he was sent was situate, unless there was a deficiency of room, etc., see sec. 27, subs. (2), *ante.*

This section does not, however, dispense with the necessity for the endorsement of an order in the cases indicated in sec. 27, subs. (3), *ante*, by a visitor of the asylum. As to cases where a union is wholly in one county and its workhouse in another, see sec. 6 of the Act 1891, *ante.*

Restriction as to institution to which pauper may be removed.

69. Except under the provisions of the preceding section, a pauper lunatic shall not be removed under an order of removal to any institution for lunatics into which he could not have been received under a reception order.

This section re-enacts sec. 78 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Pauper.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Order of removal.—As to removal of pauper lunatics, see secs. 60-68, *ante.*

Institution for lunatics.—Definition of, sec. 341, *post.* As to institu-

tions into which pauper can be received under a reception order, see sec. 27, *ante*.

Reception order.—As to summary reception orders, see secs. 13, *et seq.*, *ante*.

Sec. 70 (1)-(3).

70. (1) Every order for the removal of a lunatic from an institution for lunatics, or from the charge of any person, and the consent of the Commissioners thereto, where required, shall be in duplicate. One duplicate shall be delivered to the manager of the institution for lunatics or the person from whose care the lunatic is removed, and the other to the manager of the institution for lunatics or the person into whose care the lunatic is removed.

Removal orders to be in duplicate (16 & 17 Vict. c. 96, sec. 20; 16 & 17 Vict. c. 97, secs. 77, 82, 86).

This section is based on the sections noted in the margin.

Every order . . . the consent.—As to such orders, see secs. 58-69, *ante*.

As to consent of Commissioners, see sec. 58 and sec. 65, subs. (2), *ante*.

Lunatic.—Definition of, sec. 341, *post*.

Institution for lunatics.—Definition of, sec. 341, *post*, and see sec. 69, *sup*.

The Commissioners.—Definition of, sec. 341, *post*.

Where required.—See note to "consent," *sup*.

Manager.—Definition of, sec. 341, *post*.

(2) Every such order, with such consent as aforesaid where required, shall be sufficient authority for the removal and reception of the lunatic, in accordance with the order.

(The order a sufficient authority.)

See notes to preceding subsection, *sup*.

Sufficient authority.—As to execution of order for removal of pauper lunatic, see sec. 66, *ante*.

As to protection of persons putting the Act in force, see sec. 330, *post*.

(3) The manager of the institution from which, or the person from whose care the lunatic is removed under any such order, shall deliver, free of expense, a copy of the reception order and documents accompanying the same to the person executing the order for removal, to be by him

(Copy of order to be delivered to person executing.)

Sec. 70 (3), (4).

delivered to the manager of the institution into which, or the person into whose care, the lunatic is removed.

See notes to subsections (1) and (2) *sup.*

The reception order and documents, etc.—As to ordinary reception order, see sec. 4, subs. (1), *ante*, and documents accompanying, *ib.* subs. (2), *ante*. As to summary reception orders, see sec. 13, *ante*.

(Copy to be certified.)

(4) Every such copy shall be certified under the hand of the person whose duty it is to deliver the same.

See notes to subsections (1), (2), (3), *sup.*

Certified.—Wilful misstatement of material fact in certificate is a misdemeanour, sec. 317, subs. (2), *post*.

Removal of alien to his native country. (Act of 1889, sec. 44, subs. (1).)

71. (1) Where an alien is detained as a lunatic, and his family or friends desire that he should be removed to the country of which he is a subject, the Commissioners, upon application by any member of the family or by a friend of the alien, may inquire into the circumstances of the case and report thereon to a Secretary of State.

Object of section.

This subsection re-enacts sec. 44, subs. (1) of the Lunacy Act 1889. The policy of the section is to provide means for checking the immigration of lunatic aliens. If such lunatics are paupers there is difficulty in ascertaining their settlement, see sec. 290, subs. (1), *post*; and in any case their wants can be better understood and attended to, *ceteris paribus*, in the country of which they are subjects than in England.

Lunatic.—Definition of, sec. 341, *post*. The section does not apply to criminal lunatics. As to removal of such from India, see Lunatics Removal (India) Act 1851, *post*; and to and from the colonies, see sec. 10 of the Colonial Prisoners Removal Act of 1884, *post*.

The Commissioners.—Definition of, sec. 341, *post*.

No removal without initiative of family.

The family.—There can be no removal of alien lunatics except at the instance of their friends.

Inquire into . . . and report.—As to the points to be inquired into and reported upon, see notes to subs. (2), *inf.*

Secretary of State.—See definition of cited, p. 169. In practice the Home Secretary.

(2) A Secretary of State, if satisfied by such report that the person to whom the report relates is an alien and

a lunatic, and that his removal is likely to be for his benefit, and that proper arrangements have been made for such removal and for his subsequent care and treatment, may, by warrant, direct the alien to be delivered to the person named in the warrant for the purpose of removal to the country of which he is a subject, and every such warrant shall be obeyed by the person or authority under whose charge the lunatic is.

Sec. 71 (2), (3).

(Secretary of State's warrant for removal. Act of 1889, s. 44, subs. (2).)

This subsection re-enacts sec. 44, subs. (2) of the Lunacy Act 1889.

See notes to preceding subsection, *sup.*

If satisfied . . . treatment.—This clause embodies the points which the Commissioners are to inquire into and report upon.

Shall be obeyed.—As to protection of persons putting the Act in force, see sec. 330, *post.* See subs. (3), *inf.*

(3) A warrant under this section shall be sufficient authority for the master of any vessel to receive and detain the lunatic on board the vessel, and to convey him to his destination.

(Warrant sufficient authority to master of vessel. Act of 1889, s. 44, subs. (3).)

This subsection re-enacts sec. 44, subs. (3) of the Lunacy Act 1889.

See notes to preceding subsection.

Sufficient authority.—The master is not obliged to receive the lunatic.

Discharge of Lunatics.

72. (1) A private patient detained in an institution for lunatics, or under care as a single patient, shall be discharged if the person on whose petition the reception order was made by writing under his hand so directs.

Discharge of private patient (8 & 9 Vict. c. 100, secs. 72, 73; 16 & 17 Vict. c. 96, sec. 17; 16 & 17 Vict. c. 97, secs. 83, 84; 25 & 26 Vict. c. 111, sec. 43; Lunacy Act 1889, sec. 28.)

This subsection re-enacts sec. 72 of the Lunacy Act 1845 (8 & 9 Vict. c. 100) in regard to the discharge of private patients from hospitals or licensed houses; sec. 17 of the Lunacy Act 1853 (16 & 17 Vict. c. 96), as to the discharge of single patients; and sec. 83 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as to the discharge of private patients from asylums.

A private patient.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Sec. 72 (1), (2).

Single patient.—See sec. 4, *ante.*

Discharged.—As to temporary discharge on trial or for health, see sec. 55, *ante.* As to boarding-out of pauper lunatics with relatives or friends, see sec. 57, *ante.* As to removal of lunatics, etc., secs. 58 to 71, *ante.* As to entries and notices on discharge, see rr. 22 and 23, Rules of Commissioners in Lunacy, 1895, *post.*

The person.—See sec. 4, subs. (1), or the substitute appointed for him, see sec. 48, subs. (2), *ante.* As to who may discharge if petitioner is incapable, see subs. (2), *inf.* As to discharge by Commissioners, see subs. (3), *inf.*

The reception order.—See sec. 4, subs. (1), *ante.*

So directs.—The direction must be unequivocal and unconditional.

(Procedure where person signing order dead, etc., or pauper classified as private patient.)

(2) If that person is dead, or incapable by reason of insanity, absence from England, or otherwise, of signing an order for discharge, or, if a patient having been originally classified as a pauper is afterwards classified as a private patient, the person who made the last payment on account of the patient, or the husband or wife, or if there is no husband or wife, or the husband or wife is incapable as aforesaid, the father, or if there is no father, or he is incapable as aforesaid, the mother of the patient, or, if there is no mother, or she is incapable, then any one of the nearest of kin of the patient, may give the direction for his discharge.

This subsection re-enacts, as to private patients in hospitals or licensed houses, sec. 73 of the Lunacy Act 1845 (8 & 9 Vict. c. 100); as to single patients, sec. 17 of the Lunacy Act 1853 (16 & 17 Vict. c. 96); as to private patients in an asylum, sec. 84 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97); as to pauper patients afterwards classified as private patients, sec. 28 of the Lunacy Act 1889.

That person, i.e. the petitioner for a reception order or his substitute, see subs. (1), *sup.*

Dead . . . or otherwise.—The person having the charge of the lunatic must be satisfied by the person giving the direction for the discharge that the conditions indicated in this subsection exist.

Order for discharge.—See notes to subs. (1), *sup.*

If a patient.—See sec. 24, *ante.* It is the duty of the Commissioners (sec. 187, subs. (1) (*d*), *post*) to inquire into the classification of lunatics in asylums.

Pauper.—Definition of, sec. 341, *post.*

Private patient.—Definition of, sec. 341, *post.*

The direction for his discharge.—See note to "so directs" in subs. (1), *sup.*

Sec. 72 (3).

(3) If there is no person qualified to direct the discharge of a patient under this section, or no person able or willing to act, the Commissioners may order his discharge.

(Procedure where no person qualified to direct discharge.)

This subsection re-enacts, as to private patients in hospitals or licensed houses, and single patients, sec. 43 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111); and as to pauper patients afterwards classified as private patients, part of sec. 28 of the Lunacy Act 1889.

No person qualified.—As to persons qualified, see subss. (1) and (2), *sup.*

Direct.—As to nature of direction, see note to subs. (1), *sup.*

No person able or willing.—As to grounds of inability to act, see subs. (2), *sup.* The reluctance of the relatives of lunatics to direct their discharge has always been a difficulty with which the Commissioners in Lunacy have had to contend. Sec. 43 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111), re-enacted in part by this subsection, was designed to remedy this evil, with which, however, the Commissioners had dealt previously to its enactment in the same way by their inherent powers (see Report of 1859, Ans. 251, 258, 259).

Object of provision.

The Commissioners.—Definition of, sec. 341, *post.*

Order his discharge.—As to orders of discharge by Commissioners, see sec. 76, *post.*

As to restriction on discharge of patient under this section, see sec. 74, *inf.*

73. The authority liable for the maintenance of a pauper lunatic detained in a hospital or licensed house may make an order for the discharge of the lunatic, and may direct the mode of discharge, and upon production to the manager of the hospital or house of a copy of the order he shall forthwith discharge the patient, or suffer him to be discharged.

Discharge of pauper in hospital or house (8 & 9 Vict. c. 100, sec. 74).

This section re-enacts sec. 74 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), as to the discharge of paupers from any hospital or licensed house, with a new provision for cases where the local authority is liable for the maintenance of the lunatic.

The authority.—Definition of, sec. 240, *post.*

As to liability of local authority, see sec. 290, *post.*

Pauper.—Definition of, sec. 341, *post.*

Sec. 73.

Lunatic.—Definition of, sec. 341, *post.*

Hospital.—Definition of, sec. 341, *post.*

Licensed house.—As to licensed houses, see sec. 177, *post.*

Order.—As to discharge by Commissioners, see sec. 72, subs. (3), *ante*, and sec. 76, *post.*

Discharge.—As to entries and notices on discharge, see rr. 22 and 23 of the Rules of the Commissioners in Lunacy, 1895, *post.*

Manager.—Definition of, sec. 341, *post.*

As to restrictions on discharge of patient under this section, see sec. 74, *inf.*

Restrictions on discharge (8 & 9 Vict. c. 100, sec. 75; 16 & 17 Vict. c. 96, sec. 17; 16 & 17 Vict. c. 97, sec. 85; Lunacy Act 1889, sec. 41).

74. A patient shall not be discharged under the provisions of the two preceding sections if the medical officer of the institution, or, in the case of a single patient, his medical attendant, certifies in writing that the patient is dangerous and unfit to be at large, together with the grounds on which the certificate is founded, unless two of the visitors of the asylum, or the Commissioners visiting the hospital or house, or the visitors of the house, or in the case of a single patient, one of the Commissioners, after the certificate has been produced, consent in writing to the patient's discharge.

This section re-enacts, as to patients in hospitals and licensed houses, sec. 75 of the Lunacy Act 1845 (8 & 9 Vict. c. 100); as to single patients, sec. 17 of the Lunacy Act 1853 (16 & 17 Vict. c. 96); as to private patients in asylums, sec. 85 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as amended by sec. 41 of the Lunacy Act 1889.

A patient.—The sections in question apply to private patients and single patients, sec. 72, subs. (1), *ante*; private patients originally classified as paupers, *ib.* subs. (2); and paupers, sec. 73, *sup.*

The medical officer.—Definition of, sec. 341, *post.*

As to position of medical officer in regard to (*a*) absence on trial or for health, sec. 55, subs. (1), *ante*, and *ib.* subs. (7), *ante*; (*b*) removal of paupers by two visitors, sec. 67, *ante.*

The institution.—Definition of, sec. 341, *post.*

As to restrictions on institutions to which paupers may be sent, see sec. 69, *ante.*

Single patient.—As to reception of, see sec. 4, *ante.*

Certifies.—No form of certificate is prescribed by the Act. Forms 8 and 13, Sched. ii., *post*, may be adapted.

Wilful misstatement of material fact in any certificate is a misdemeanour, sec. 317, subs. (2), *post.*

As to protection of persons signing, see sec. 330, *post*.

Sec. 74.

"Dangerous and unfit to be at large."

Dangerous and unfit to be at large.—The Dillwyn Committee (Report, 1878, p. v.) insisted that detention should cease as soon as the patient is no longer dangerous to himself or others, and is not likely to benefit by further detention. In their 33rd Annual Report (p. 136) the Commissioners in Lunacy pointed out that the Committee had overlooked an important qualification, viz. that the patient though not dangerous to himself or to others, nor likely to benefit by further treatment, should not be of such habits as would offend against public decency or morality, if allowed to be at large. The Commissioners added: "If remitted to the care of friends, they would of course be responsible for (the patient's) conduct, and even where detention in an asylum may no longer be proper, detention in a private house under certificates may still be necessary." Possibly the words "unfit to be at large" meet this suggestion.

The grounds.—See Form 8, Sched. ii., *post*.

Visitors.—As to visitation of asylums by (*a*) visiting committee, see secs. 188, 189, *post*; (*b*) Commissioners, sec. 187, *post*.

There are some interesting observations as to the importance of frequent and careful visitation as the surest mode of guarding against unduly prolonged detention, with full power in the hands of the Commissioners to order discharge, in the Report of the Dillwyn Committee (1878, p. v.).

Two visitors cannot order the discharge of a patient from an asylum without the advice in writing of the medical officer, see sec. 77, subs. (2), *post*.

Asylum.—Definition of, sec. 341, *post*.

The Commissioners.—Definition of, sec. 341, *post*.

As to visitation by, of hospitals and licensed houses, sec. 191, *post*; single patients, sec. 198, *post*.

House.—As to licensed houses, see sec. 177, *post*.

As to visitation of by visiting committee, see sec. 269, subs. (10), *post*.

Discharge by Commissioners of patients in hospital or licensed house and of single patients. (Act of 1889, s. 31, subs. (1).)

75. Two of the Commissioners, one of whom shall be a medical and the other a legal Commissioner, may visit a patient detained in any hospital or licensed house, or as a single patient, and may, within seven days after their visit, if the patient appears to them to be detained without sufficient cause, make an order for his discharge.

This section re-enacts sec. 31, subs. (1) of the Lunacy Act 1889, which repealed secs. 76 and 77 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The Commissioners.—Definition of, sec. 341, *post*.

As to discharge of private or single patients by Commissioners, see sec. 72, subs. (3), *ante*.

Sec. 75.

As to notice of discharge, see sec. 76, subs. (1), *inf.*

A medical . . . a legal Commissioner.—As to medical and legal Commissioners, see secs. 150, 151, *post.*

May visit.—Only a single visit is now required. Under secs. 76 and 77 of the Act of 1845 two separate and distinct visits, at an interval of seven days at least, were necessary.

Hospital.—Definition of, sec. 341, *post.*

As to visitation of hospitals by Commissioners, see sec. 191, *post.*

Licensed house.—As to, see sec. 177, *post.*

As to visitation of licensed houses by Commissioners, see sec. 191, *post.*

Single patient.—As to reception of, see sec. 6, *ante.*

As to visitation of by Commissioners, see sec. 198, *post.*

Sec. 31, subs. (1) of the Act of 1889 extends the powers of the Commissioners under the Act of 1845 to single patients in accordance with a recommendation of the Commissioners in their 33rd Annual Report, p. 134.

Order.—The order need not be under the seal of the Commission, sec. 152, subs. (1), *post.*

Discharge by *habeas corpus.*

The discharge of a lunatic may, of course, also be obtained by *habeas corpus ad subjiciendum.* The writ may be issued either during the sittings or in vacation, and be made returnable at Chambers in vacation. An affidavit in support of the application is necessary from the party who claims the writ, or else an affidavit from some other person to the effect that the party on whose behalf the writ is claimed is so coerced as to be unable to make an affidavit,[1] and that the party promoting the application was duly authorised by the lunatic.[2] The Court has jurisdiction, in virtue of sec. 5 of the Judicature Act, 1890 (53 & 54 Vict. c. 44), to grant costs against the unsuccessful party upon an application for a writ of *habeas corpus.*[3] A person applying *bonâ fide,* or apparently *bonâ fide,* for a writ of *habeas corpus* ought to be shown the documents under which the detention is justified.[4] See further as to *habeas corpus,* Short & Mellor's Practice of the Crown Office, p. 335.

Notice of order of discharge. (Act of 1889, s.43, subs. (1).)

76. (1) The Commissioners when they have made any order of discharge shall forthwith serve the same upon the manager of the institution for lunatics where the patient is detained, or upon the person having charge of the patient as a single patient, and shall give notice of such order—

[1] *Canadian Prisoners' Case,* 1839, 3 St. Tr. N.S. 963.

[2] *Ex parte Child,* 1854, 15 C.B. 238.

[3] *Reg.* v. *Jones,* 1894, 29 L.J. 342. *Aliter* under the old practice; *re Shuttleworth,* 1846, 9 Q.B. 651, and *ex parte Child, ubi sup.*

[4] *Re J. G. Dell,* 1891, 35 S.J. 783; *re Carter,* 1893, 95 L.T. Jo. 37.

Sec. 76 (1), (2).

This subsection re-enacts in substance sec. 43, subs. (1) of the Lunacy Act 1889. Clause (*b*), *inf.*, is practically new.

The Commissioners.—See notes to preceding section.

Any order of discharge.—See sec. 34, subs. (2), *ante;* sec. 38, subs. (6), *ante;* sec. 39, subs. (9), *ante;* sec. 49, *ante;* sec. 72, subs. (3), *ante;* and sec. 75, *ante.*

Serve.—Detention of a patient after due service of notice of discharge is a misdemeanour, see subs. (2), *inf.*

Manager.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Single patient.—As to reception of, see sec. 4, *ante.*

(*a*) In the case of a private patient, to the person on whose petition the reception order was made or who made the last payment on account of the patient.

(In case of private patient.)

Private patient.—Definition of, sec. 341.

The person . . . made.—See sec. 5, subs. (1), *ante;* or a substitute appointed for him by Commissioners, see sec. 48, subs. (2), *ante.*

Who made . . . patient.—In the case of a patient originally classified as a pauper, see sec. 72, subs. (2), *ante.*

(*b*) In the case of a pauper, to the authority liable for his maintenance.

(In case of pauper.)

Pauper.—Definition of, sec. 341, *post.*

The authority.—This clause differs in form from clause (*b*) in sec. 43, subs. (1) of the Act of 1889.

As to authority liable, etc., see sec. 290, *post.*

For definition of authority, see sec. 240, *post.*

(2) Any person who has been duly served with any such order of discharge, and detains a patient after the date of discharge appointed thereby, shall be guilty of a misdemeanour.

(Penalty for detention of lunatic after order of discharge. Act of 1889, s. 43, subs. (2).)

This subsection re-enacts sec. 43, subs. (2) of the Lunacy Act 1889.

Person.—*Semble* in the case of a local authority proceedings would be instituted against the clerk.

Duly served.—See subs. (1), *ante.*

Order of discharge.—See subs. (1), *ante.*

Shall be guilty.—Unless the detention can be justified at common law by showing that it was necessary for the safety of the lunatic or of others, see *ante*, p. 86.

Misdemeanour.—As to prosecution for, see secs. 325, 328, *post.*

Sec. 77 (1), (2).

As to punishment of, see note to sec. 7, subs. (4), *ante*.

Sec. 330, protecting persons putting the Act in force, does not apply to omissions, see *post*.

Visitors may discharge patients in asylums (16 & 17 Vict. c. 97, sec. 79; 18 & 19 Vict. c. 105, sec. 15).

77. (1) Any three visitors of an asylum may order the discharge of any person detained therein whether he is recovered or not.

This subsection re-enacts the first clause of sec. 79 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as amended by sec. 15 of the Lunacy Act 1855 (18 & 19 Vict. c. 105), which dispensed with the necessity for the orders of the visitors being under seal.

Visitors.—As to visitation of asylum, see sec. 188, *post*.

Asylum.—Definition of, sec. 341, *post*.

Order.—The advice in writing of the medical officer is necessary in the case of discharge by two visitors, see subs. (2), *inf.*, unless the case comes within sec. 74, *ante*.

Discharge.—As to discharge of private patient, see sec. 72, *ante*; paupers in hospitals or licensed houses, see sec. 73, *ante*; by Commissioners, see secs. 75, 76, *ante*.

As to entries and notices on discharge, see rules 22 and 23 of the Rules of the Commissioners in Lunacy, 1895, *post*.

As to notice of intention to discharge pauper to relieving officer or clerk to local authority, see sec. 80, *post*.

(Discharge by advice of medical officer.)

(2) Any two such visitors, with the advice in writing of the medical officer, may order the discharge of any person detained in the asylum.

This subsection re-enacts the second clause of sec. 79 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See notes to preceding subsection.

Advice in writing.—A patient may be discharged from an asylum under secs. 72 and 73, *ante*, although the medical officer has certified against his discharge, if two visitors consent to it in writing, see sec. 74, *ante*.

Medical officer.—Definition of, sec. 341, *post*.

Discharge by visitors of lunatics in licensed houses (8 & 9 Vict. c. 100, secs. 78, 79, 80).

78. (1) If after two visits by two visitors to a house licensed by justices, it appears to the visitors that any patient is detained without sufficient cause, the visitors may make such order as they think fit for his discharge.

This subsection re-enacts part of sec. 78 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Two visits.—Made at an interval of not less than seven days, subs. (3), *inf.*

As to notice of second visit, see subs. (4), *inf.*

As to examination of medical officer, see subss. (5) and (6), *inf.*

Two visitors.—One must be a medical practitioner, see subs. (2), *inf.*

As to appointment of, see sec. 177, *post.*

A house licensed by justices.—As to licensing by justices, see sec. 208, subs. (2), *post.*

Definition of justice, sec. 341, *post.*

As to powers of visitors in regard to asylums, see sec. 77, *sup.*

Patient.—This term does not include a lunatic so found, subs. (7), *inf.*

Order.—The order must be signed by the visitors making it, subs. (8), *inf.*

As to notice of intention to discharge pauper, see sec. 80, *post.*

(2) In the case of visits under this section, one of the visitors shall be a medical practitioner. (One of visitors to be medical practitioner.)

This subsection re-enacts part of sec. 78 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding section.

Medical practitioner.—Definition of, sec. 341, *post.*

(3) The two visits shall be made by the same visitors at an interval of not less than seven days. (Interval between visits.)

This subsection consolidates and re-enacts part of the first clause of sec. 79, and the first clause of sec. 80 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The two visits.—See subs. (1), *sup.*

The same visitors.—See subss. (1) and (2), *sup.*

Not less than seven days.—"Days" means clear days.[1] The days of the two visits are to be excluded from the computation. Thus if the first visit is made on the 1st of the month, the second may be paid on, but not before, the 9th.

(4) Seven days' notice of the second visit shall be given either by post or by an entry in the patients' book to the manager of the house, who shall forthwith send by post a copy of the notice, in the case of a private patient to the person on whose petition the reception order was made, or by whom the last payment on account of the lunatic was (Notice of second visit.)

[1] Cp. *re Railway Sleepers Supply Company*, 1885, 29 Ch.D. 204, and authorities there cited.

Sec. 78 (4), (5).

made, and in the case of a pauper to the authority liable for his maintenance, and also to the clerk of the visitors of the house.

This subsection re-enacts in substance the second clause of sec. 80 of the Lunacy Act 1845 (8 & 9 Vict. c. 100). The clause beginning "in the case of a pauper" is practically new.

Seven days' notice.—There is to be an interval of not less than seven clear days between the two visits, subs. (3), *sup.*

The second visit.—See subss. (1)-(3), *sup.*

Shall be given, i.e. by the clerk to the visitors (as to whom, see sec. 178, *post*) if sent by post, by the visitors if given by entry.

By post.—As to sending notices by post, see sec. 329, subs. (1), *post.*

Patients' book.—As to, see rule 1 (2) of the Rules of the Commissioners in Lunacy, 1895, *post.*

The manager.—Definition of, sec. 341, *post.*

The house.—As to visitation of licensed houses, see sec. 177, *post.*

Shall forthwith, etc.—See notes, *sup.* As to penalty for failure to send notice, see sec. 320, *post;* and proceedings, see secs. 325, 328, 329, *post.* The proviso in sec. 320, *post*, and the provisions of sec. 320, *post*, may be invoked by any person against whom such proceedings are taken. Sec. 320 is so worded as to make the visitors or their clerk liable to a penalty for default in giving the seven days' notice of the second visit prescribed by this subsection.

Private patient.—Definition of, sec. 341, *post.*

The person on whose petition, etc.—See sec. 5, subs. (1), *ante*, or his substitute, see sec. 48, subs. (2), *ante.*

In the case of . . . maintenance.—See sec. 290, *post.*

The clerk of the visitors.—See sec. 178, *post.*

(Examination of medical officers by visitors.)

(5) The visitors before making an order under this section shall examine the medical officer of the house as to his opinion respecting the fitness of the patient to be discharged, if he tenders himself for examination.

This subsection re-enacts the second clause of sec. 79 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsections.

Examine.—The visitors may examine the medical officer on their first or second visit, or on both visits. The examination need not be formal, and of course is not on oath. *Semble*, it is the duty of the visitors, however, to ascertain not only the fact of the opinion, but its grounds, see subs. (6), *inf.*

Medical officer.—As to advice of in other cases, see sec. 74, *ante*, and sec. 77, subs. (2), *ante.*

(6) If after such examination an order for discharge is made, and the medical officer furnishes to the visitors a statement of his reasons against the discharge, they shall forthwith send the statement to the clerk of the visitors. (Statement to clerk of visitors.)

This subsection re-enacts the third clause of sec. 79 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsections.

Statement.—As to protection of medical officer making, see sec. 330, *post*.

Shall forthwith.—As to penalty, see sec. 320, *post*, and prosecution, see secs. 325, 328, *post*, for default.

(7) This section shall not apply to a lunatic so found by inquisition. (Section not applicable to lunatics so found.)

This subsection was enacted by the present Act for the first time.

A lunatic.—Definition of, sec. 341, *post*.

So found.—See secs. 90 *et seq.*, *post*.

Inquisition.—Definition of, sec. 341, *post*.

As to supersedeas of inquisitions, see secs. 105 and 106, *post*.

(8) Every order under this section shall be signed by the visitors by whom it is made. (Order to be signed by visitors.)

This subsection re-enacts part of the first clause of sec. 79 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsections.

79. When application is made to the visiting committee of an asylum by a relative or a friend of a pauper lunatic confined therein, requiring that he may be delivered over to the custody and care of such relative or friend, any two of the visitors may, if they think fit, discharge the lunatic upon the undertaking of the relative or friend, to their satisfaction, that the lunatic shall be no longer chargeable to any union, county, or borough, and shall be properly taken care of and prevented from doing injury to himself or others. Discharge of pauper on application of relative or friend (16 & 17 Vict. c. 97, sec. 81).

This section re-enacts sec. 81 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Sec. 79.

Application is made.—See sec. 57, *ante*. Sec. 80, *inf.*, does not apply to this section.

Visiting committee.—Definition of, sec. 341, *post*.

Asylum.—Definition of, sec. 341, *post*.

Relative.—Definition of, sec. 341, *post*.

Pauper.—Definition of, sec. 341, *post*.

Lunatic.—Definition of, sec. 341, *post*.

Discharge.—As to discharge of patients in asylums, see sec. 77, *ante*, and in licensed houses, see sec. 78, *ante*, by visitors. As to entries and notices, see rr. 22 and 23 of the Rules of the Commissioners in Lunacy, 1895, *post*.

As an alternative the lunatic may be boarded-out, see sec. 57, subs. (1), *ante*, in which case provision is made for his maintenance, *ib.* subs. (2), *ante*.

Chargeable.—See sec. 290, *post*.

Union.—Definition of, sec. 341, *post*.

County.—Definition of, sec. 341, *post*.

Visiting committee may send notice of intention to discharge pauper lunatic to relieving officer or clerk of local authority (16 & 17 Vict. c. 97, sec. 80).

80. (1) When the visitors of an asylum order a pauper lunatic confined therein to be discharged, except on the application of a relative or friend, they may, when they think fit, send a notice in writing, signed by the clerk of the asylum, by post or otherwise, of their intention to discharge the lunatic to a relieving officer of the union to which the lunatic is chargeable, or to the clerk of the local authority liable for his maintenance.

This subsection re-enacts in substance the first part of sec. 80 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97). The provision for cases in which the pauper is chargeable, or a local authority is liable for his maintenance, is substantially new.

The visitors.—As to visitation of asylums, see sec. 188, *post*.

Asylum.—Definition of, sec. 341, *post*.

Order.—As to discharge by visitors from asylums, see secs. 77 and 78, *ante*. As to expenses of discharge, see sec. 297, *post*.

Except on the application.—See sec. 79, *ante*.

They may.—As to notices, etc., which visitors must give or send, see sec. 78, subss. (4) and (6), *ante*.

A relieving officer.—These words would include a general relieving officer.[1]

The clerk of the asylum.—As to the appointment, etc., of, see sec. 276, subs. (1) (*d*), *post*.

The union.—Definition of, sec. 341, *post*.

Chargeable.—See sec. 290, *post*. The corresponding words in

[1] Cp. 58 J.P. 724.

Sec. 80 (1), (2).

the Act of 1853 were "wherein it shall have been adjudged that such lunatic is settled, or if no such adjudication shall have been made, to the overseer of the parish from which such lunatic shall have been sent to such asylum." The alteration was made in consequence of the point raised in *Liverpool Overseers* v. *Lancaster Lunatic Asylum*[1] as to the liability for removal where it was adjudged that the lunatic was not settled in the parish on which the order was made, and that it could not be ascertained in what parish he was settled. In that case it was held that the parish from which the lunatic was sent to the asylum was bound to remove him. This point is now expressly covered by subs. (2).

Clerk.—Definition of in relation to local authority, see sec. 341, *vost.*

Local authority.—Definition of, sec. 240, *post.*

Liable, etc.—See sec. 286, *post.*

(Removal on receipt of notice.)

(2) Upon receipt of such notice, the relieving officer or clerk shall cause the lunatic upon his discharge to be forthwith removed to the workhouse of the union to which the lunatic is chargeable, or, if the lunatic is chargeable to a county or borough, to the workhouse of the union from which he was sent to the asylum.

This subsection re-enacts in substance (with the addition noted above, see subs. (1), *sup.*), the second part of sec. 80 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See notes to preceding subsection.

Shall cause.—Apparently personal removal by the relieving officer or clerk is not required. As to penalty for default in complying with the Act, see sec. 320, *post*, and as to prosecution for, see secs. 325-328, *post.* The relieving officer or clerk is bound to remove the lunatic, see note to "chargeable" in subs. (1), *sup.*

The workhouse.—Definition of, sec. 341, *post.*

Discharge from workhouse by guardians. (Act of 1889, s. 21, subs. (9).)

81. The guardians of the union to which a workhouse belongs may make an order for the discharge of any lunatic detained therein.

This subsection re-enacts sec. 21, subs. (9) of the Lunacy Act 1889.

Guardians.—Definition of, sec. 341, *post.*

Union.—Definition of, sec. 341, *post.*

Workhouse.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

No order of justices is required for the purposes of this section,

[1] 1880, 5 Ex.D. 215.

Sec. 82.

No order of justices necessary. Copies of reception order and other documents to be furnished (8 & 9 Vict. c. 100, sec. 56).

nor was any for those of sec. 62, *ante*, which enabled justices to order the removal of a lunatic detained in a workhouse.

82. The Secretary to the Commissioners shall, upon the discharge of a person who considers himself to have been unjustly confined as a lunatic, furnish to him upon his request, free of expense, a copy of the reception order and certificate or certificates upon which he was confined, and if the order was made upon petition, also of the petition and statement of particulars upon which the reception order was made.

This subsection re-enacts in substance the second clause of sec. 56 of the Lunacy Act 1845 (8 & 9 Vict. c. 100). The clause commencing "and if the order" is new. Cp. secs. 4 to 6, *ante*.

The Secretary.—As to appointment, etc., of, see sec. 154, *post*.

The Commissioners.—Definition of, sec. 341, *post*. Appointment, etc., of, see sec. 150, *post*.

Shall.—The Dillwyn Committee (1878, Report, p. vii.) suggested that every person discharged from confinement should have access, with the consent of the Commissioners, to all documents connected with his detention. On this the Commissioners in Lunacy, in their 33rd Annual Report (p. 138), observe: "We fear it would seriously check the free and unrestrained communication, both to us and to the medical superintendents and others, of information regarding cases, which at present, as is well known, is treated as strictly confidential." The condition as to the consent of the Commissioners would probably have diminished the risk referred to, but the present section does not alter sec. 56 of the Act of 1845, except in the formal point above noted. See general note to section.

Upon the discharge.—As to discharge of lunatics, see secs. 72-81, *ante*.

The reception order.—As to definition of, see sec. 341, *post*. See also secs. 4-23 and sec. 28, *ante*.

Certificate.—As to certificates, see sec. 4, subs. (2), *ante*; sec. 11, subs. (1), *ante*; sec. 13, subs. 2, *ante*; sec. 16, *ante*; sec. 23, subs. (2), *ante*; sec. 24, subs. (1), *ante*; sec. 28, *ante*.

Petition.—See sec. 4, *ante*.

Statement of particulars.—See sec. 5, subs. (1), *ante*.

Recovery of Patient.

83. (1) The manager of every hospital and licensed house, and a person having charge of a single patient, shall

Sec. 83 (1), (2).

Notice to be given on recovery of patient (16 & 17 Vict. c. 96, sec. 19).

forthwith, upon the recovery of a patient, send notice thereof in the case of a patient not a pauper to the person on whose petition the reception order was made, or by whom the last payment on account of the patient was made, and in the case of a pauper to the guardians of his union, or if a local authority is liable for his maintenance to the clerk of the local authority.

This subsection re-enacts the first part of sec. 19 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

The manager.—Definition of, sec. 341, *post.*

Hospital.—Definition of, sec. 341, *post.*

Licensed house.—As to licences for, see sec. 207, *post.*

A person . . . patient.—As to reception of single patients, see sec. 4, *ante.*

Notice.—See subss. (2) and (3), *inf.*

Pauper.—Definition of, sec. 341, *post.*

The person on whose petition.—See sec. 5, *ante;* or his substitute appointed by Commissioners, see sec. 48, *ante.*

Or by whom . . . made.—In the case, *e.g.*, of a patient originally classified as a pauper. As to discharge of such patients, see sec. 72, subs. (2), *ante.*

Guardians.—Definition of, sec. 341, *post.*

Union.—Definition of, sec. 341, *post.*

Local authority.—Definition of, see sec. 240, *post.*

Liable.—See sec. 286, *post.*

Clerk.—Definition of in relation to local authority, see sec. 341, *post.*

(Notice. Act of 1889, sec. 36.)

(2) The notice shall state that unless the patient is removed within seven days from the date of the notice he will be discharged.

This subsection, and subs. (3), *inf.*, re-enact sec. 36 of the Lunacy Act 1889. Sec. 19 of the Lunacy Act 1853 (16 & 17 Vict. c. 96) provided that if within fourteen days after the notice referred to in subs. (1), *sup.*, the person was not discharged by order of the person or guardians to whom the notice was sent, a further notice should be sent to the Commissioners, or in the case of a patient in a licensed house, to the clerk of the visitors, in order that the Commissioners or visitors might order the discharge.[1] Under subss. (2) and (3) of this section the patient is discharged on the expiry of seven days from the date of the notice without any further notice or order.

[1] As to practice under the Act of 1853, see Report of 1859, evidence of Lord Shaftesbury, Ans. 241-246, 256-259.

Sec. 83 (2), (3).

The notice.—See form of, Rules of Commissioners, 1895, Form 15 *post.*

Removed.—As to removal of patients, see secs. 58 *et seq.*, *ante.*

The removal of patients by friends is desirable, for a twofold reason. It provides some guarantee for their being properly looked after, and it tends to relieve the feeling which lunatics frequently have that their relatives are indifferent to their welfare.[1]

The Commissioners intimate to recovered patients the fact of their discharge, and request a written acknowledgment of the information.[2]

"Within seven days."

Within seven days.—Days mean all days, including Sundays, etc., but excluding the day of the date of the notice.

(Discharge.)

(3) In case the patient is not removed within seven days from the date of the notice he shall be forthwith discharged.

See notes to preceding subsection.

Coroner to inquire into death if necessary (16 & 17 Vict. c. 96, sec. 19; 25 & 26 Vict. c. 111, sec. 44).

84. Every coroner shall upon receiving notice of the death of a lunatic within his district, if he considers that any reasonable suspicion attends the cause and circumstances of the death, summon a jury to inquire into the same.

This section re-enacts, as to patients in hospitals and licensed houses, the last clause of sec. 19 of the Lunacy Act 1853 (16 & 17 Vict. c. 96), and as to patients in asylums and single patients, sec. 44 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111).

Notice.—As to statement and notices on the death of a lunatic, see rule 27 of the Rules of the Commissioners in Lunacy, 1895, *post.*

Death.—As to burial of lunatics, see secs. 258, 259, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Within his district.—Under the Coroners Act 1887 (50 & 51 Vict. c. 71), sec. 3, the coroner has jurisdiction where the dead body is lying, although the death did not occur within his jurisdiction.

"Reasonable suspicion."

Reasonable suspicion, i.e. reasonable suspicion, either from the known circumstances or appearances, or from the fact that the death was sudden and its cause unknown, that the death was violent or unnatural.

Summon a jury.—As to procedure, see Coroners Act 1887 (50 & 51 Vict. c. 71).

Post-mortem examination.

Inquire into.—A *post-mortem* examination may be ordered whether an inquest is held or not, and the Commissioners in Lunacy, in their 35th (p. 83) and 36th (p. 90) Annual Reports, have placed great emphasis on the importance of such examinations being held in all cases. As to fees of medical practitioners in connection with

[1] Cp. on this point Lord Shaftesbury's evidence, Report of 1859, Ans. 241.
[2] 29th Rep. App. O.

coroners' inquests or *post-mortem* examinations, see sec. 22 of the Coroners Act 1887. Sec. 85.

Escape and Recapture.

Escape and recapture.

85. If any person detained as a lunatic under this Act escapes, he may, without a fresh order and certificate or certificates, be retaken at any time within fourteen days after his escape by the manager of the institution for lunatics or the master of the workhouse in which he was detained, or any officer, or servant thereof respectively, or by the person in whose charge he was as a single patient, or by any one authorised in writing by such manager, master, or person.

This section re-enacts in substance secs. 87 and 99 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and sec. 88 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97). The provision as to escapes from a workhouse is new.

Lunatic.—Definition of, sec. 341, *post.*

Escapes.—As to penalties on managers, etc., for permitting an escape, see sec. 323, *post.*

As to notices on escape and recapture, see rule 23 of the Rules of the Commissioners in Lunacy, 1895, *post.* As to escape from England to Scotland or Ireland, see sec. 86, *inf.*; from Scotland into England or Ireland, sec. 87, *inf.*; from Ireland into England or Scotland, secs. 88 and 89, *post.*

A fresh order, etc.—As to reception orders on petition, see secs. 4 and 5, *ante.*

As to urgency orders, see sec. 11, *ante.*

As to summary reception orders, see secs. 13-21, *ante.*

As to reception orders by two Commissioners, see sec. 22, *ante.*

As to requirements of, see sec. 29, *ante.*

Certificate or certificates.—As to where one certificate is sufficient, see sec. 11, subs. (1), and sec. 16, *ante.* As to where two certificates are necessary, see sec. 4, subs. (2), and sec. 13, subs. (2), *ante.* As to requirements of, see sec. 28, *ante.*

Retaking justified though patient not lunatic.

Retaken.—The retaking under this section may be justified under an order and certificate in proper form, although the person named therein is not a lunatic.[1] As to the recapture of patients allowed to be absent on trial or for health, see sec. 55, subs. (8), *ante.* As

[1] *Norris* v. *Seed*, 3 Ex. 782. *Aliter*, *post*, under secs. 86-88, where the words "under lawful authority" are used. The warrant referred to in secs. 86, subs. (2), *inf.*; 87, subs. (2), and 88, subs. (2), *post*, is *primâ facie* evidence of detention under lawful authority.

Sec. 85.

to recapture of criminal lunatics, see sec. 11, Criminal Lunatic Asylums Act 1860 (23 & 24 Vict. c. 75), *post.* As to notices to be sent on recapture, see rule 23, Rules of the Commissioners in Lunacy, 1895, *post.* As to protection of persons putting the Act in force, see sec. 330, *post.*

Manager.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Workhouse.—Definition of, sec. 341, *post.*

The person . . . patient.—As to reception of single patients, see sec. 4, *ante.*

Escape from England into Scotland or Ireland. (Act of 1889, s. 78, subs. (1).)

86. (1) If any person detained as a lunatic under lawful authority in England escapes into Scotland or Ireland, notice of the escape shall as soon as practicable be given to the Commissioners, who may, by writing under their seal, authorise an application to be made by such person as they think fit to any justice having jurisdiction in the place where the lunatic was so detained for a warrant authorising such person to retake the lunatic and bring him back to such place.

This subsection re-enacts sec. 78, subs. (1) of the Lunacy Act 1889.

Lunatic.—Definition of, sec. 341, *post.*

"Lawful authority."

Lawful authority.—These words do not appear in sec. 85, *sup.*, dealing with escape and recapture in England. The warrant referred to in subs. (2), *inf.*, is *primâ facie* evidence of *lawful authority.* See the use of these words in sec. 6, subs. (5), *ante.*

In England.—As to escape from Scotland into England or Ireland, see sec. 87, *inf.* As to escape from Ireland into England or Scotland, see sec. 88, *inf.*

Notice.—As to notices, see rule 23 of the Rules of the Commissioners in Lunacy, 1895, *post.*

The Commissioners.—Definition of, sec. 341, *post.*

Seal.—As to documents requiring to be under the seal of the Commission, see sec. 152, *post.*

Justice.—Definition of, sec. 341, *post.*

A warrant.—As to effect of warrant, see subs. (2), *inf.* The warrant is to be countersigned by the sheriff in Scotland, or a justice in Ireland, subs. (2), *inf.* The limit of time for retaking is 14 days after escape, sec. 89, *post.*

Authority.—As to protection of persons putting the Act in force, see sec. 330, *post.*

(2) Such warrant, when granted, shall in Scotland or

Ireland as well as in England be sufficient primâ facie evidence that the person stated therein to have escaped was so detained as a lunatic under lawful authority as aforesaid, and of the fact of his escape, and shall be sufficient authority for any sheriff in Scotland, or for any justice in Ireland, to countersign the same; and any such warrant so countersigned may be executed in Scotland, or Ireland, as the case may be, by retaking such lunatic and bringing him from thence, to the intent that he may be restored to the custody from which he escaped.

Sec. 86. (2).

(Warrant *primâ facie* evidence. Act of 1889, s. 78, subs. (2).)

This subsection re-enacts sec. 78, subs. (2) of the Lunacy Act 1889.

Such warrant.—See subs. (1), *sup.*

Sufficient primâ facie evidence.—See sec. 85, *ante.*

Lunatic.—Definition of, sec. 341, *post.*

Lawful authority.—See notes to subs. (1), *sup.*

Sufficient authority.—As to protection of persons putting the Act in force, see sec. 330, *post.* The recapture must, however, be effected within 14 days after escape, sec. 89, *post.*

"Sufficient authority."

Sheriff in Scotland.—Sheriff includes sheriff-substitute. Interpretation Act 1889 (52 and 53 Vict. c. 63), sec. 28.

May be executed.—It must be executed within 14 days after escape, sec. 89, *post;* otherwise the person executing it will be deprived of the benefit of sec. 330, *post.*

Retaking.—As to notices to be sent to Commissioners on recapture, see rule 23 of the Rules of the Commissioners in Lunacy, 1895, *post.*

87. (1) If any person detained as a lunatic under lawful authority in Scotland escapes into England or Ireland, notice of the escape shall as soon as practicable be given to the General Board of Commissioners in Lunacy for Scotland, who may, by writing under the hand of one of such Commissioners, authorise an application to be made by such person as they think fit to any sheriff having jurisdiction in the place where the lunatic was so detained for a warrant authorising such person to retake the lunatic and bring him back to such place.

Escape from Scotland into England or Ireland. (Act of 1889, s. 79, subs. (1).)

Sec. 87. (1)-(3).

This subsection re-enacts sec. 79, subs. (1) of the Lunacy Act 1889.

See notes to sec. 86, subs. (1), *sup.*

The General Board . . . Scotland.—As to this body, see *ante*, notes to sec. 2.

One of such Commissioners.—A writing purporting to be signed by one is *primâ facie* sufficient, see subs. (3), *inf.*

(Warrant *primâ facie* evidence and sufficient authority. Act of 1889, s. 79, subs. (2).)

(2) Such warrant, when granted, shall in England and Ireland as well as in Scotland be sufficient primâ facie evidence that the person stated therein to have escaped was so detained as a lunatic under lawful authority as aforesaid, and of the fact of his escape, and shall be sufficient authority for any justice in England or Ireland to countersign the same; and any such warrant so countersigned may be executed in England or Ireland, as the case may be, by retaking such lunatic and bringing him from thence, to the intent that he may be restored to the custody from which he escaped.

This subsection re-enacts sec. 79, subs. (2) of the Lunacy Act 1889.

See notes to sec. 87, subs. (1), *sup.*

Retaking.—A lunatic remaining in Scotland after escape may be retaken within 28 days thereafter, Lunacy (Scotland) Act 1866 (29 & 30 Vict. c. 51), sec. 6.

(Act of 1889, s. 79, subs. (3).)

(3) For the purposes of this section a writing purporting to be signed by one of the Commissioners in Lunacy for Scotland shall be deemed to have been signed by him until the contrary is proved.

This subsection re-enacts sec. 79, subs. (3) of the Lunacy Act 1889.

See notes to subs. (1) and (2), *sup.*

"Shall be deemed."

Shall be deemed, i.e. shall be taken *primâ facie* to be. As to the uses of the word "deemed," see p. 138.

Escape from Ireland into England or Scotland. (Act of 1889, s. 80, subs. (1).)

88. (1) If any person detained as a lunatic under lawful authority in Ireland escapes into England or Scotland, notice of the escape shall as soon as practicable be given, where such person has been so detained by order

Sec. 88 (1), (2).

of the Lord Chancellor for the time being entrusted by the sign manual of Her Majesty with the care and commitment of the custody of the persons and estates of lunatics in Ireland, to the Registrar in Lunacy, and in other cases to the Inspectors of Lunatics in Ireland, who may, by writing under the hand of the said registrar, or one of the said inspectors, as the case may be, authorise an application to be made by such person as they think fit to any justice having jurisdiction in the place where the lunatic was so detained for a warrant authorising such person to retake the lunatic and bring him back to such place.

This subsection re-enacts sec. 80, subs. (1) of the Lunacy Act 1889, in substance. The provision as to persons detained by the Lord Chancellor of Ireland is new.

See notes to sec. 86, subs. (1), and sec. 87, subs. (1), *ante*.

The Lord Chancellor . . . Ireland.—As to jurisdiction in lunacy in Ireland, see p. 81.

The Registrar in Lunacy.—See sec. 3 of the Lunacy Regulation (Ireland) Act 1871 (34 Vict. c. 22), and *ante* p. 84.

The Inspectors of Lunatics.—See *ante* p. 78.

By writing under the hand.—A writing purporting to be under the hand of the registrar or inspector is *primâ facie* sufficient (subs. (3), *inf.*).

(Warrant *primâ facie* evidence and sufficient authority. Act of 1889, s. 80, subs. (2).)

(2) Such warrant, when granted, shall in England and Scotland as well as in Ireland be sufficient primâ facie evidence that the person stated therein to have escaped was so detained as a lunatic under lawful authority as aforesaid, and of the fact of such escape, and shall be sufficient authority for any justice in England, and for any sheriff in Scotland, to countersign the same; and any such warrant so countersigned may be executed in England or Scotland, as the case may be, by retaking the lunatic and bringing him from thence, to the intent that he may be restored to the custody from which he escaped.

Sec. 88 (2), (3).

This subsection re-enacts sec. 80, subs. (2) of the Lunacy Act 1889, omitting the reference to the sheriff-substitute in that subsection.

See notes to sec. 86, subs. (2), *ante*.

Retaking.—A lunatic remaining in Ireland after escape may by Irish law be retaken within 14 days thereafter, secs. 3 and 4 Lunatic Asylums (Ireland) Act 1875 (38 & 39 Vict. c. 67); the same length of time as is fixed by sec. 89, *post*, and see *ante* p. 82.

(Writing by Registrar in Lunacy. Act of 1889, s. 80, subs. (3).)

(3) For the purposes of this section a writing purporting to be signed by the Registrar in Lunacy, or one of the Inspectors of Lunatics in Ireland, as the case may be, shall be deemed to have been signed by him unless the contrary is proved.

Origin of subsection.

This subsection re-enacts sec. 80, subs. (3) of the Lunacy Act 1889. The words "the Registrar in Lunacy," and "as the case may be," were added to meet the amendment referred to in the general note to subs. (1), *sup.*

See notes to preceding subsections.

"Shall be deemed."

Shall be deemed, i.e. shall be taken to be *primâ facie*. As to the uses of the word "deemed," see pp. 121, 138.

(Limit of time of retaking lunatic. Act of 1889, s. 81.)

89. A warrant, granted under any of the three preceding sections, shall not authorise the retaking of a lunatic after the expiration of the time during which he could have been retaken according to the law in force in the place where he was detained as a lunatic if he had remained there after his escape.

This section re-enacts sec. 81 of the Lunacy Act 1889.

See notes to secs. 86-88, *ante*.

As to protection of persons putting the Act in force, see sec. 330, *post*.

Sec. 90 (1).

Part III.

JUDICIAL INQUISITION AS TO LUNACY.

The Inquisition.

90. (1) The Judge in Lunacy may upon application by order direct an inquisition whether a person is of unsound mind and incapable of managing himself and his affairs.

Order for inquisition as to lunacy.

This subsection is based on sec. 40 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), and secs. 8 and 9 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86).

The Judge in Lunacy.—As to who is Judge in Lunacy, see sec. 108, *post*, and notes thereon. As to the origin and present position of the jurisdiction in lunacy, see *ib.*

Judge in Lunacy.

Application.—The application is to be made by petition,[1] signed by the petitioner, and attested by a solicitor (see Form of Petition, Form 4, Schedule, Rules of 1892, *post*).

Application. Petition.

The petition should be supported by affidavits by medical men—preferably unconnected with lunatic asylums[2]—and by members of the family of the alleged lunatic, and other persons who know him, not merely stating that the respondent is of unsound mind, or setting forth in general terms the facts on which the deponent relies, but giving the precise facts and evidence. Thus, in *ex parte Persse*,[3] Hart, L.C., refused to issue an order on an application supported by an affidavit setting out that the deponent had conversation with the supposed lunatic, that his language was incoherent, and that he was not of sound mind; holding that the very words which gave the impression of incoherency should have been set out.

Affidavits.

It is, of course, unnecessary and undesirable that an affidavit in support of a petition for an inquisition should approximate to the dimensions and character of a brief. But the deponent should state all the material facts on which his inference of unsoundness of mind is based, and should see that the facts which he does state point to unsoundness of mind and incapacity on the part of the alleged lunatic to manage himself and his affairs. In *re Scott*,[4] where the alleged lunatic was in Australia, but had all his property in England, James, L.J., made an order for an inquisition before a jury in Middlesex upon a petition supported by affidavits, in which letters from medical men and friends in Australia stating the lunacy, and one from the

[1] Rules of 1892, r. 16, *post*.

[2] *Re Anon.*, 1844, Drur. 286. Here Sugden, L.C., refused to receive, in support of an application for an inquisition, a certificate by the keeper of a private lunatic asylum.

[3] 1828, 1 Moll. 219. For forms of affidavits, see *post*, Appx.

[4] 1874, 22 W.R. 748.

Sec. 90 (1).

alleged lunatic himself, bearing intrinsic evidence of insanity, the handwriting of which was sworn to in the affidavits, were set out. "A commission," said Hart, L.C., in *ex parte Persse*,[1] "is not a matter lightly to be granted. The mere issuing of (it) may produce irritation highly detrimental. It is therefore not to issue without great circumspection and a case made satisfactory to the mind of the judge that he has before him proof amounting at least to this, to show the necessity of further enquiry."

The affidavits may also state in general terms the nature and amount of the alleged lunatic's property, and give information as to his kindred and nearest relatives.[2]

The affidavits must be sworn before a Commissioner or an officer of the Court, other than the solicitor to the petitioner or his clerk or country agent, although he may be a Commissioner.[3] It is the Commissioner's duty to satisfy himself before he administers the oath that the witness does thoroughly understand what he is going to swear to, and he should not be satisfied on this point by any statement or evidence but that of the witness himself.[4]

The petition and the evidence in support of it are to be filed in the Masters' Office, where office copies are filed for the use of the parties. A plain copy of the petition should be left at the Masters' Office at the same time, and there will then be marked on the original petition the date of its presentation, and it will be returned to the solicitor to enable him to serve it upon the alleged lunatic, with the notice required by the Rules in Lunacy endorsed thereon.[5] The petition and evidence are then brought before the judge[6] (without previous consideration by the Masters[7]) out of Court,[8] and the judge may make an order upon it without attendance of counsel, solicitors, or parties, or after such attendance, or may adjourn it into Court, or refer it to the Masters for inquiry, or further inquiry upon any matter.[8] The judge may also direct any person (besides the alleged lunatic, who, if within the jurisdiction, is entitled to notice[9]) to be served with notice of the petition, or may dispense with such service[10] —except in the case of the alleged lunatic if within the jurisdiction.[9]

Procedure on application.

Affidavits. Exhibits.

It is not the practice in lunacy to file with an affidavit in support

[1] 1828, 1 Moll. 219.

[2] Elmer, p. 7, and cp. *re Clare*, 1846, 2 J. and Lat. 571; and see forms of affidavits, *post*, Appx.

[3] *Re Hogan*, 1754, 3 Atk. 812; *Hopkin* v. *Hopkin*, 1853, 22 L.J., N.S., Ch. 728; *Wood* v. *Harpur*, 1840, 3 Beav. 290; *Duke of Northumberland* v. *Torr*, 1878, 7 Ch.D. 777-780 (the country agent case); and cp. *Ross* v. *Shearman*, 1820, in 2 Coop. *t.* C. 172, where the authorities are collected. See also *Ward* v. *Gamgee*, 1891, W.N. 165. Stirling, J., held that an affidavit sworn before a person appointed a Commissioner, in the form in use before the Judicature Acts, according to which it continued in force during the pleasure of the Court, and was not limited, as is the practice since the Judicature Acts, to the period during which the Commissioner continues to practise as a solicitor, was not invalid; and cp. the Commissioners for Oaths Act 1890 (52 Vict. c. 10).

[4] Per Kay, J., in *Bourke* v. *Davis*, 1889, 44 Ch.D., at p. 126.

[5] Elmer, p. 9. As to this notice, see r. 26 of the Rules of 1892, *post*, and note to subs. (2), *inf.*

[6] See preceding note, *sup.*

[7] Rules of 1892, r. 18, *post.*

[8] *Ib.* 1892, r. 23, *post.*

[9] See subs. (2), *inf.*

[10] Rules of 1892, r. 24, *post.*

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of a petition for inquisition any exhibits thereto. But this is only as a matter of convenience and to save expense, and any one who has a right to inspect and take copies of the affidavit has a similar right as to the exhibit.[1]

Inspection of documents.

It may be convenient to consider here the law as to the inspection of documents in the Lunacy Office.

Order required.

Interest required.

No one except parties having liberty to attend is allowed to inspect such documents without an order of one of the Masters or a Judge in Lunacy. A person who has no interest except curiosity will not be allowed to see them. On the other hand, any one who can satisfy the Master or Judge that he desires to see such documents for any reasonable and proper purpose is allowed to do so, provided always, if the lunatic is living, that he is not prejudiced thereby.[2] If the lunatic is dead, the cases of *re Wood*,[3] *re Ferrior*,[4] and *re Smyth*[5] show that if a person wants to see documents in the custody of the Court in order to make good a claim to the lunatic's property, such a purpose is *primâ facie* sufficient to induce the Court to allow inspection. Moreover, documents in the custody of the Masters in Lunacy are not in the possession or power of a litigant,[6] and therefore no question of discovery by him before trial, or of privilege from such discovery, can arise, and if a Judge in Lunacy is applied to for inspection, privilege from discovery is an irrelevant topic for discussion, except so far as it may bear upon the exercise by the Court of the discretion which it has in the matter. At the same time, in *re Wood*[7] the rule is laid down too broadly that parties, and those "claiming under them," are entitled to inspection on making out to the satisfaction of the Court their interested or representative character; and a similar observation applies to the statement of Cotton, L.J., in *re Smyth*,[8] that "any *primâ facie* case which makes it reasonably probable that the documents may contain something to support the applicant's case is sufficient." It is not suggested that either of these cases was wrongly decided. In *re Wood*,[7] B. and his wife C. had commenced an action for the administration of the personal estate of W., a lunatic who had been so found by inquisition, and had died intestate, on the footing that C. was the legal personal representative of one of the next-of-kin of the lunatic living at his death, and as such entitled to share in his personal estate. The

Interest of litigant.

re Wood.

[1] *Re Hinchliffe*, 1894, W.N. 179; 1895, 1 Ch. 117, where the exhibits were a case for the opinion of counsel and opinion thereon.

[2] *Re H. W. Strachan*, 1895, 1 Ch., per Lindley, L.J., at p. 443. Prior to 1825 no one was, it seems, debarred from inspecting proceedings in lunacy. But subsequently to that date the practice assumed its present form. *Re Wood; Banner* v. *England*, 1863, 4 De G. J. & S. 134.

[3] *Ubi sup.*

[4] 1867, 3 Ch. 175, 182.

[5] 1880, 15 Ch.D. 286; 1881, 16 Ch.D. 673.

[6] *Vivian* v. *Little*, 1883, 11 Q.B.D. 370, and cp. *London and Yorkshire Bank* v. *Cooper and Others*, 1885, 15 Q.B.D. 7 and 473, where *Vivian* v. *Little* was distinguished (on the ground that the Company, whose liquidation was alleged to take the documents out of the possession and power of the defendants, was dissolved before the application for discovery was made) but approved of.

[7] 1863, 4 De G. J. and S. 134.

[8] *Ubi sup.*, and particularly 16 Ch.D., at p. 674.

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bill charged that by collusion among the persons appearing in the lunacy, orders had been made under that jurisdiction which enabled the defendants' predecessor in interest to obtain the grant of letters of administration of the lunatic's personal estate. The plaintiffs also controverted the title of the defendants' predecessor in interest as one of the lunatic's next-of-kin, as had been found in the lunacy, and charged that the truth of their statements would appear by the proceedings in lunacy, and applied accordingly for leave to inspect them. The defendants denied the plaintiffs' allegations, and replication was filed. The Lords Justices said that they had caused inquiries to be made as to the practice, the result being that it appeared that though prior to 1825 no one had been debarred from inspecting proceedings in lunacy, the practice subsequently to that date had been to consider such proceedings as concerning only the parties and those claiming under them. To entitle any other persons to such inspection, a case must be made out to the satisfaction of the Court. In their lordships' judgment such a case had been made out by the plaintiffs. It will be observed that in this case the plaintiffs were treated as strangers. It is conceived that they were both parties and persons claiming under the lunatic. But it is clear that on the facts they were entitled to inspection.

re Smyth.

Re Smyth[1] was a narrower case. A lunatic died intestate, and an action was commenced between two rival claimants, L. and S., for the recovery of his real estate. The main issues turned on the pedigree of the lunatic, and on the question whether the descent ought to be traced *ex parte paternâ* or *ex parte maternâ*. A number of documents relating to the pedigree of the lunatic were in the Lunacy Office. L. obtained an order for inspection on verifying by affidavit his alleged title as heir-at-law,[2] and it was subsequently[3] held by Cotton, L.J., that S., who produced *primâ facie* evidence of his being heir-at-law of the lunatic, was entitled to a similar order, although it was sworn on the other side, and not contradicted, that the lands had descended to the lunatic from his mother, and that S. was no relation to the mother. This latter decision may be supported on the grounds (1) that as the question whether the property belonged to the heir *ex parte paternâ* or *ex parte maternâ* was the issue to be determined at the trial of the action, it was unnecessary for S. to traverse L.'s statements *pro hac vice;* (2) that an order had already been made in favour of L.; and (3) that even supposing the lunatic acquired the lands from his mother, the documents might contain something to show that the descent was nevertheless to be traced from him.

Exceptions to general rule.

But there are exceptions to the general rule laid down in the cases which we have been examining, *e.g.* :—

Reports by confidential advisers of Court.

(1) The Court will not, under any circumstances, make an order for the inspection of the reports made to it confidentially by its own medical advisers.[4]

[1] See notes 2 and 3.
[2] 1880, 15 Ch.D. 288.
[3] 1881, 16 Ch.D. 674.
[4] Per Lindley, L.J., in *re H. W. Strachan*, 1895, 1 Ch., at p. 444. See sec. 186, *inf.*

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Application by litigant to find out adversary's case.

re H. W. Strachan.

(2) Inspection will not be permitted to a litigating party, whether claiming under the lunatic or not,[1] who applies for it before the trial of the litigation in order to find out his adversary's case. In the case of *re H. W. Strachan*[2] an order for an inquiry as to the sanity of an alleged lunatic had been made on the petition of A. While the inquiry was pending, the alleged lunatic died, having made a will in favour of B. A. then brought an action in the Probate Division against B., alleging that the will had been obtained by undue influence while the testator was insane. B. counter-claimed, asking for probate, and applied in the lunacy for liberty to inspect the petition and the affidavits in support thereof, which were in the custody of the Court, in order, as she stated in her affidavit, that she might ascertain what allegations of mental incapacity were intended to be made at the trial of the probate action, and might have an opportunity of rebutting them. The Master in Lunacy made the order, and Rigby, L.J., affirmed the decision, but Lindley and A. L. Smith, L.JJ., discharged the order, holding that the object of the application was not to obtain evidence in support of B.'s case (since even if she had the affidavits she could not put them in as documentary evidence for this purpose at the trial) but to see what A.'s case was, so that she might break it down by cross-examination at the trial, or prepare herself with a case in answer to it.

Evidence on commission.

A commission to take the evidence of witnesses abroad may be obtained, as in other cases,[3] on summons supported by the usual evidence.[4]

Petition should be presented by,

nearest relation.

The petition for an order for an inquisition ought generally to be preferred by the nearest relation to the alleged lunatic, and if it is not so preferred, the Court looks at it with particular jealousy, for the fact implies that the persons who ought to protect him are neglecting their duty.[5] A husband, for instance, should present the petition for an order against his wife, and *vice versa;* and where this rule is departed from, it must be shown that the husband or wife either concurs in or is acquainted with the proceedings,[6] otherwise the order may not issue, although the evidence of unsoundness of mind appearing on the affidavits may be *primâ facie* satisfactory.[7] In such a case, however, the Court, instead of dismissing the petition, may direct notice to be given to the husband or wife.[8] Again, where a lunatic is unmarried, the next-of-kin, or some of them, should present the petition, or their concurrence

[1] In *re H. W. Strachan*, 1895, 1 Ch., at p. 446, the applicant for discovery was treated as "claiming under" the lunatic.

[2] *Ubi sup.*

[3] *Re Webb*, 1846, 2 Coop. *t.* C. 145; where another case of the same kind, *re Woodcock*, 1845, *ubi sup.*, at p. 158, is cited, and numerous precedents are given.

[4] See Annual Practice, R.S.C. Ord. 37 r. 5.

[5] *Ex parte Persse*, 1828, 1 Moll., per Hart, L.C., at p. 220; and cp. *re Bedell*, 1809, per Eldon, L.C., 2 Coop. *t.* C. 163.

[6] Elmer, p. 9.

[7] *Re Turner*, 1823, per Eldon, L.C., 2 Coop. *t.* C. 162.

[8] *Re Rean*, 1809, per Eldon, L.C., 2 Coop. *t.* C. 163; and cp. Rules of 1892, r. 24, *post*, as to power of Court to dispense with service.

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in or acquaintance with it should be shown, and, except in the former case, the matter may be adjourned into Court.[1]

May be preferred by,

On the other hand, no rule has been laid down, nor has any precedent been established, to discourage proper applications from any quarter, since persons of unsound mind may require protection quite as much against their relatives as against those who do not belong to that class.[2] Thus a commission may issue upon an information by the Attorney-General,[3] by an executor under a will against a legatee under the same will,[4] by a trustee under a deed against his *cestui que trust*,[5] by a tenant of the supposed lunatic, where there was no doubt that the party was in a state that made him the proper subject of the commission, although it was opposed by his mother, under whose care he was residing, and it was alleged that the tenant, being in arrear for rent, was taking this step with a view to gaining time;[6] by a creditor against his debtor,[7] and even by an absolute stranger.[8]

Attorney-General, executor, trustee, tenant,

creditor, stranger.

Order on petition.

By order.—Where the alleged lunatic is within the jurisdiction no order is to be made upon any petition until after the expiration of seven clear days from service upon the alleged lunatic of notice of the petition, as required by subs. (2), *inf.*[9]

When to be made.

How drawn up.

Orders under the Lunacy Acts 1890 and 1891 are drawn up by the Masters, as far as possible without attendance of solicitors or parties,[10] and entered by them in a proper book provided for the purpose,[11] and are sufficiently authenticated by the seal of the Masters' Office, without their being signed.[12] Numbers in such orders are to be denoted by figures and not words;[13] and clerical mistakes or accidental slips or omissions may at any time be corrected by a judge or master.[14]

As to procedure on hearing of application, see notes to subs. (3), *post*.

Commissions may be general (sec. 112, *post*, and see sec. 334, *post*), or special (sec. 113, *post*).

Inquisition.

An inquisition.—Definition of, sec. 341, *post*.

As to extension of meaning of "commission," see sec. 334, *post*.

As to history of inquisitions, see notes to sec. 108, subs. (1) *post*.

How otherwise ordered.

An inquisition may also be ordered on a report of the Commis-

[1] Cp. Rules of 1892, r. 23, *post*.

[2] Per James, L.J., *re E. S.*, 1876, 4 Ch.D., at p. 304.

[3] 1 Coll. Lun. 125, Shelf. Lun. 113, where the interest of the Crown in persons *non compotes mentis* is given as a reason for the statement; and cp. *ex parte Persse*, 1828, 1 Moll., 219. In one case a commission was granted on the application of the Solicitor to the Treasury against a person confined in prison, *re M'Lean*, 1806, Shelf. Lun. 113.

[4] Shelf. Lun. 114, 1 Coll. Lun. 126.

[5] *Ibid.*

[6] *Ex parte Ogle*, 1808, 15 Ves. 112.

[7] *Re Bell*, 1809, 2 Coop. *t.* C. 163; *re Pearce, ex parte Clark*, 1844, 8 Jur. 89 (here the lunatic was a criminal lunatic confined in Bethlehem under 39 & 40 Geo. III. c. 94, and Lyndhurst, L.C., held that he had no power to interfere otherwise than by commission, and had no power over the person of the individual; and cp. *ex parte Hill*, 1813, Cooper, 54).

[8] *Ex parte Ward*, 1801, 6 Ves. 579; *ex parte Ogle, ubi sup.*; *re Smith*, 1826, 1 Russ. 348; *re Anstie*, 1849, 1 Mac. & G. 200; and *re E. S.*, 1876, 4 Ch.D. 301.

[9] Rules of 1892, r. 28, *post*.

[10] *Ib.* r. 63, *post*.

[11] *Ib.* r. 61, *post*.

[12] *Ib.* 1893, r. 6, *post*.

[13] *Ib.* 1892, r. 66, *post*.

[14] *Ib.* r. 68, *post*.

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sioners to the Lord Chancellor (sec. 100, *inf.*), and in the case of applications under sec. 116 (*inf.*) on a petition presented by the direction of the Masters.[1] As to the substitution of inquiries under sec. 116 of this Act for inquisition, see notes to that section, *post.*

Issue to be tried.

Whether a person . . . affairs.—As to the issue directed to be tried, see sec. 98, subs. (1), *post*, and notes thereon.

Against whom inquisition may be ordered.

An inquisition may be ordered where either the person or the property of an alleged lunatic, whether a subject or an alien, and whether of full age or not, is within the jurisdiction.[2] The decisions on which this statement is based are numerous, and deserve consideration. We will take first the case of aliens. In *re Bariatinski*[3] a commission was granted by Lyndhurst, L.C., against a Russian lady resident, and possessing property, in England, although she also had real estate in Russia. There was some dispute as to whether her domicile was Russian or English. But Lord Lyndhurst held that the domicile was immaterial to the question of jurisdiction, though it might be material to the question of discretion, if, for instance, the party had come here for a short time or for a particular purpose. It follows, therefore, that a commission may issue against an alien temporarily resident, *and* possessing property, in this country. Moreover, if temporary residence is sufficient, the possession of property in England without residence must be sufficient also. The *ratio decidendi* of the case clearly shows this. "The Crown," said the Lord Chancellor, "does not take possession of the lunatic's property for its own benefit, but it takes it by its officers for the purpose of applying the income to the party's maintenance and accumulating the surplus for him in case he recovers, or applying it according to the directions of his will, if he happen to have made one before he became insane." The grant of the inquisition is there supported on the ground of its being for the benefit of the alleged lunatic; it is this fact which justifies the inquisition in the case of a foreigner, who though he has entered English territory has not become an English subject, and prevents it from being derogatory at once to his rights and to those of the nation of which he is a member. The same reasoning applies to the case of a foreigner resident abroad but possessing property in England. There is no direct authority for the proposition that the bare residence in England of an alien, who had no property here, would justify the grant of an inquisition. But in *re Houstoun*[4] a commission in lunacy was issued by Lord Eldon, C., against a lunatic so found in Jamaica, where his property was situated,

Alien.

Resident and possessing property.

Temporarily resident and possessing property.

Resident abroad but possessing property.

Resident in England without possessing property.

[1] Rules of 1893, rr. 1 and 2, *post.*

[2] We are not concerned here with alternative methods of inquiry, or of dealing with the person and the estate of the alleged lunatic, but with the question of jurisdiction.

[3] 1843, 1 Ph. 375. This is the earliest case in which it was expressly decided that a commission might issue against an alien. But in the course of the argument a long list of cases was handed in, where commissions had issued against parties with foreign names, and the Lord Chancellor remarked in giving judgment that it was very improbable that all those parties should have been subjects of this country.

[4] 1826, 1 Russ. 312.

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and brought over to England by one of his committees for the sake of his health. "While the lunatic is here," said Lord Eldon, "no Court will have any authority over him or his property unless a commission is taken out." It is conceived that this decision would apply to the case of an alien similarly situated.

Infant.

A commission in lunacy may issue against an infant.[1] But as the Chancery Division has power over infant wards of Court and their estates, such a proceeding will be generally unnecessary except under particular circumstances, when the more ample powers given in lunacy may be required for managing their estates.[2] In *re Halse*,[3] for instance, a commission was directed to inquire into the lunacy of H., an infant residing in this country under the guardianship of his mother, but possessing property in Jamaica, in which S., the petitioner, had a reversionary interest. And H. having been found lunatic the custody of his estate was given to S. This case appears to have turned partly on the conduct of H.'s mother, who endeavoured to avoid the inquiry, and was, therefore, presumably hostile to S., and partly on the fact that the infant's property was situate abroad. In a later case—*re Flint*[4]—a commission of lunacy was granted against an infant of the age of twenty years, where it appeared by the affidavits that the party had been of very weak intellect from her birth, and that there was no ground to expect that she would ever be of sound mind or capable of managing herself or her affairs. Here the approaching expiration of the period of infancy probably formed the ground for the grant of the commission.

Jurisdiction in Chancery generally sufficient.

Commission against infant in special circumstances.

Interest of guardian.

Approaching expiration f infancy.

It is conceived that, while the mere fact of unsoundness of mind does not oust the jurisdiction of the Chancery Division over infants,[5] and while that jurisdiction may be exercised independent of, and without recourse to, the jurisdiction in lunacy,[6] still where the jurisdiction in lunacy has been invoked, in so far as it has been brought into operation, it supersedes the jurisdiction of the Chancery Division. It may be desirable to examine some of the authorities on this point. In *re Arrowsmith's Trusts*,[1] the Court of Appeal in Chancery held that for the purpose of an application under sec. 20 of the Trustee Act 1850, for an order vesting mortgaged premises in certain persons to execute a conveyance of them instead of an *infant* trustee of unsound mind, but not so found, it was not necessary to resort to

Jurisdiction in lunacy when invoked and exercised supersedes that of Chancery.

re Arrowsmith's Trusts.

[1] In *re Edwards*, 1879, 10 Ch.D., at p. 608, James, L.J., said, "I am not aware that I ever heard of a petition in lunacy against an infant. Is there any authority in support of the view that unsoundness of mind takes away the jurisdiction which exists, on the ground of infancy?" The answer to this question is that the authorities are the other way; cp. *re Arrowsmith's Trusts*, 1858, 4 Jur., N.S., 1123; *re Edwards*, *ubi sup.* But it does not follow, and it is not the case, that a commission may not issue against an infant in the circumstances stated in the text. Moreover, it is conceived that while the mere fact of an infant becoming of unsound mind would not oust the jurisdiction of the Chancery Division, a verdict on an inquisition finding an infant of unsound mind would do so. See *Beall* v. *Smith*, 1873, L.R. 9 Ch., at p. 92, and *sup.*

[2] Shelf. Lun. 110.

[3] 30th Nov. 1743, cited *arguendo* in 2 Ves. sen., at p. 403, reported as *re Hodsell*, Ambl. 110.

[4] 18th Aug. 1831, Shelf. Lun. 110.

[5] *Re Edwards*, *ubi sup.*

[6] *Re Arrowsmith's Trusts*, *ubi sup.*

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re Edwards.

the jurisdiction in lunacy, as the matter was within the ordinary jurisdiction of the Court of Chancery.[1] In *re Edwards*[2] an application was made to the Vice-Chancellor of the County Palatine of Lancaster to give directions as to whether an infant ward of Court, who was alleged to have become of unsound mind, should or should not be kept at a lunatic asylum. There was a dispute between the guardians as to whether the infant was mentally competent or not. The County Palatine Act 1850, sec. 23, had abolished the jurisdiction previously existing in the Court in cases of lunacy. Prior to the passing of that Act, the Court had jurisdiction (within its limits) to issue and execute commissions of lunacy, and to deal with the persons and estates of lunatics. The Vice-Chancellor held that the section in question merely abolished that jurisdiction, and left the subject-matter of it to be dealt with by the general lunacy jurisdiction of the country, and that the Court, as a Court of Equity, still possessed the same powers which the High Court of Chancery formerly possessed, and which are now exercised by the Chancery Division over the estates of lunatics not so found by inquisition, in cases in which moneys have been paid into Court, or where trusts are being executed by the Court. But he held also that he had no jurisdiction to decide the question whether the child was of unsound mind or not. On this point he was overruled by the Court of Appeal. "The Court has jurisdiction," said James, L.J., "over an infant as such, and it is no answer to say that the infant is subject to some other physical or mental disability. . . . In considering what is best for the infant, the Vice-Chancellor is obliged to consider something collateral, viz. what is the infant's state of mind." With regard to these two decisions it is to be observed that in neither case had the jurisdiction in lunacy been brought into operation. In *re Arrowsmith's Trusts*,[2] the application was intituled "in lunacy," but it was made to the Court of Appeal in Chancery; the infant trustee had not been found lunatic; and the Court did not deny that recourse might have been had to the jurisdiction in lunacy; they merely said it was not necessary; and the order was eventually made "in lunacy" as well as "in Chancery." In *re Edwards*,[2] too, no proceedings had been taken in lunacy, the Court of Appeal simply decided that the Vice-Chancellor was not precluded from investigating the question of the infant's state of mind, when such an investigation was necessary in order to enable him to exercise his jurisdiction, and fulfil his duty to provide in the best way he could for the treatment and education of the infant.

The view here taken as to the relative jurisdictions in lunacy and in Chancery in such cases is confirmed by the language used by James, L.J., in *Beall* v. *Smith*,[3] and by the decisions in *Vane* v. *Vane*,[4]

[1] The petition in this case had been intituled "in the lunacy," but their Lordships held that this was unnecessary, and directed the order to be intituled "in Chancery" as well as "in lunacy," in order that it might not form a precedent adverse to the jurisdiction of Chancery.

[2] *Ubi sup.*, see footnote (1), *sup.* p. 266.

[3] 1873, L.R. 9 Ch., at p. 92.

[4] 1876, 2 Ch.D. 124, questioned in *re Bligh*, 1879, 12 Ch.D. 364, and corrected in *re Brandon's Trusts*, 1879, 13 Ch.D. 773.

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in *re Bligh*[1] and in *re Brandon's Trusts*,[2] relating to persons of unsound mind not so found by inquisition.

Subject.

A commission may also issue against a subject (*a*) resident out of, but possessing property in, England, and (*b*) possessing property out of, but resident in, England.

Resident out of, but possessing property in, England.

(*a*) Owing to the fact that in the common standing orders for the Great Seal for commissions *de lunatico inquirendo*, the Commissioners were to cause a jury of "the county and neighbourhood where the alleged lunatic resides" to be returned, some doubt formerly arose as to whether an inquisition could be ordered where the alleged lunatic was out of England. But in *ex parte Southcot*,[3] Lord Hardwicke, after a full examination of the principles and practice applicable to the subject, made an order for a commission against an alleged lunatic resident in Flanders, but possessing property in England, directing the inquiry to be held where the mansion and the greater part of the estate lay. This precedent has been repeatedly followed.[4] The subject is discussed in the notes to sec. 96, *post*.

ex parte Southcot.

Possessing property out of, but resident in, England.

(*b*) The principles on which a commission will issue against an alleged lunatic possessing property out of, but resident in, England, have already been stated in dealing with the case of aliens, *sup.* p. 265. There are numerous authorities for the proposition above stated.[5]

Commission at first confined to idiocy and lunacy.

Commissions were at first confined to idiocy or lunacy. But in time this part of the prerogative was extended to persons *non compotes mentis* or *insanae mentis*, or, since the proceedings were in English, "of unsound mind."[6] Here the expansion stopped till the time of Lord Hardwicke, and there are numerous cases, beginning with *ex parte Read*[7] in 1654 and ending with *ex parte Barnsley*[8] in 1744, in which

Extended to *non compotes mentis.*

[1] 1879, 12 Ch.D. 364.

[2] 1879, 12 Ch.D. 773. On issuing the commission in *re Halse*, 1743, 2 Ves. sen. 403 ; 1 Ambl. 110 (*sup.*), Lord Hardwicke made an order that the infant should not be married without the leave of the Court, Shelf. Lun. 110, n. (*r*). As only the custody of the estate was granted in this case "in lunacy," this would appear to have been in effect an order "in Chancery."

[3] 1751, 2 Ves. sen. 401 ; *re Halse*, or, as it is reported in 1 Ambl. 110, *re Hodsell*, was an earlier case, *v. sup.*

[4] *Re Stevens*, 5th Jan. 1819, 2 Coop. *t.* C. 150 ; *re Lyon*, 1836, *ib.* ; *re Webb*, 1846, *ib.* 145 ; *re Scott*, 1874, 22 W.R. 748 ; and cp. *re Wykeham*, 1823, 1 Turn. & Russ. 537.

[5] *Re Annesley*, 1749, 1 Ambl. 77, where the custody of the person and estate was granted, though several of the estates were in Ireland. *Morison's case*, *ib.* 81, and 4 Bro. C.C. 236 n. ; *Lady Marr's case*, 1 Ambl. 81 ; *ex parte Annandale*, 1749, 1 Ambl. 79 ; *re Houston*, 1826, 1 Russ. 312 ; *re Tottenham*, 1837, 2 My. & Cr. 39, and cases cited there, footnote (a), at p. 42.

[6] *Lord Donegal's case*, 1751, per Lord Hardwicke, L.C., 2 Ves. sen., at p. 408 ; and cp. *re Earl of Portsmouth*, 22nd April 1815, per Eldon, L.C., Shelf. Lun. 105.

[7] Cited in 3 Atk., at p. 168.

[8] Reported in 3 Atk. 167. The only contrary case was that of *Mrs. Wall* (4th May 1733, cited *ib.* at pp. 168 and 172), where a committeeship was granted on a finding tantamount only to weakness of mind. But the grant was made *sub silentio*, and is therefore not of much weight as a precedent. *Lord Donegal's case* was later, *v. sup.*, but it was one of an application for a commission, and not to quash a return. Lord Donegal was of weak understanding, and could not answer the most common questions

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Variance between inquisitions and returns.

returns to inquisitions were quashed on the ground that they departed, not in words only, for a variance of this kind would not, it seems, have been fatal, but in sense and meaning from the scope of the commission as above indicated. Thus, to take the last case in the series, in *ex parte Barnsley*[1] a return, that W. B. was from weakness of mind incapable of governing himself and his lands, was quashed by Lord Hardwicke on this ground. There was a double reason for the reluctance of the Courts to extend the range of commissions beyond their old limits, viz. the fresh encroachments on the liberty of the subject and his power over his estate which such an extension involved,[1] and the fact that it was not necessary, owing to the relief which could be had in equity against fraud and imposition upon weakness.[2]

ex parte Barnsley.

Commissions in nature of those in lunacy.

In cases of imbecility.

After Lord Hardwicke's time, however, a change set in, and commissions "in the nature of those in lunacy" were granted in cases where there was such an imbecility of mind as rendered a person incompetent to manage his estate or liable to be imposed upon.[3] Thus there are numerous instances of commissions the objects of which were clearly not lunatics in the strict sense, the disorder of mind arising from causes that could not possibly admit lucid intervals —old age, for instance; a glimmering only of understanding left; a state produced by no sudden cause, but by the gradual effect of time upon the mind.[4] The scope of commissions in lunacy was still further extended by Lord Eldon and Lord Erskine. In *Ridgeway* v. *Darwin*,[5] Lord Eldon said: "Of late the question has not been whether the party is absolutely insane; but the Court has thought itself authorised (though certainly many difficult and delicate cases with regard to the liberty of the subject occur upon that) to issue the commission, provided it is made out that the party is unable to act with any proper and provident management; liable to be robbed by any one; under that imbecility of mind not strictly insanity, but as to the mischief, calling for as much protection as actual insanity."[6] *Ridgeway* v. *Darwin* (*sup.* p. 269, note 5) was a case in which the jury

as to figures, but he gave rational answers relative to his estates in England and Ireland, their situation and value, and his reasons for expecting a great rise in the Irish estate, and Lord Hardwicke refused a commission.

[1] *Ex parte Barnsley*, 1744, 3 Atk., at p. 171.

[2] *Lord Donegal's case*, 1751, 2 Ves. sen. 408.

[3] The return to the commission in such cases ran: "that the party is of unsound mind, so that he is not sufficient for the government of himself," etc.; and in *ex parte Cranmer*, 1806, 12 Ves. 445, a return that the alleged lunatic "is so debilitated as to be incapable of the general management," etc., was quashed as too loose, and a new commission was issued. Cp. *re Monaghan*, 1846, 3 J. and Lat. 258.

[4] Per Lord Erskine, L.C., in *ex parte Cranmer*, *ubi sup.*, at p. 447. A long list of commissions of the kind indicated in the text within the ten years preceding 1806 is stated to have been produced at the hearing of this case.

[5] 1802, 8 Ves. 65, and see note to (*a*) *Charlton Palmer's case*, where the mind of the subject of the commission was simply worn out by years and attention to business; and (*b*) a case—not identified—where constant intoxication was held a ground for a commission, *ib.* at p. 66. Cp. also *Gibson* v. *Jeyes*, 1801, 6 Ves., per Eldon, L.C., at p. 272. In Com. Dig., Idiot B, loss of speech by apoplexy is stated to be sufficient to justify a commission, though the patient showed signs of sense.

[6] See a curious case of alleged partial insanity in which Lord Eldon refused

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trying an inquisition found a verdict that a lady (who was really suffering from imbecility of mind proceeding from epileptic fits) was not a lunatic, on the ground apparently that the commission applied only to actual insanity. Lord Eldon did not issue a new commission, although he clearly implied that he had power to do so; but he directed two independent physicians[1] to examine her, and on their report made an order restraining her from executing any instrument except in the manner and with the attestation directed by the order.[2] The position taken up by Lord Eldon in these cases was a deliberate one. "I am pretty confident," he said, "that Lord Hardwicke would not have gone so far,[3] but finding . . . a course of cases establishing this authority, and feeling a strong inclination to maintain it, or that the legislature should take measures to preserve persons in a state of imbecility, laying them as open to mischief as insanity, till those decisions are removed or reviewed, I will not alter them."[4] Lord Erskine followed *Ridgeway* v. *Darwin*[4] in *ex parte Cranmer*,[5] but thought that the intervention of the legislature was required, partly because of the momentous character of the jurisdiction, and partly on another and rather curious ground. "A man," he said, "may have passed a great and illustrious life, and by the course of nature his faculties may decay so that he may not be fit either to govern himself or his affairs. It is unseemly that he should be put upon the footing of a lunatic, and that a Commission should issue in the ordinary course. . . . It is supposed . . . that this unhappy disease runs into the posterity, and thence arises a grievous dilemma, that either such a person must be deprived of protection altogether, or in future times that distress to his family should be the consequence. Why should not a man be entitled to protection in this second state of infancy as well as the first?"[6]

Issue re-established in its present form.

There was, however, a reaction against the views of Lord Eldon and Lord Erskine on the part of later judges,[7] and the issue was re-established in its present form, viz. whether the alleged lunatic is of unsound mind and incapable of managing himself and—which means "or"[8]—his affairs.

Inquisition in case of persons incapable mentally.

Under the Rules in Lunacy, 1893, r. 1, *post*, an inquisition may be ordered in the case of persons incapable by mental infirmity, arising from disease or age, of managing their affairs.

to interfere in *ex parte Hall*, 1802, 7 Ves. 260.

[1] A similar course was taken by Lord Eldon in *re Langley*, 2nd and 13th Aug. 1822, and see *Sherwood* v. *Sanderson*, 1815, 19 Ves. 286. In *re Windham*, 1862, 31 L.J., N.S., Ch., at p. 721, the alleged lunatic was tendered for examination before the Lords Justices, but their Lordships declined to have an interview with him.

[2] A similar order appears to have been made by Lord Harcourt, see 2 Ves. sen. 408.

[3] As to the law in Lord Hardwicke's time, *v. sup.* p. 268.

[4] *Ridgeway* v. *Darwin*, 1802, 8 Ves. at p. 66.

[5] 1806, 12 Ves. 445.

[6] In commenting upon this passage, Shelford says (Lun. p. 106, n. (*f*)): "Such is the perishable fabric even of the finest genius, that Lord Somers, the Duke of Marlborough, Dean Swift, and Lord Mansfield might, at the close of their lives, have been made the subject of such a commission." Lord Erskine's own name unhappily might be added to the list.

[7] *Re J. B.*, 1836, 1 My. & Cr. 538; *re Lawler*, 1874, Ir. Rep. 8 Eq. 506.

[8] *Re Cathcart*, 1892, 1 Ch., at p. 559.

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As to the limitation of the issue in an inquisition, see notes to sec. 98, subs. (1), *post*.

An action will lie for maliciously suing out a commission in lunacy against a person, but to support such an action, malice or a want of probable cause must be proved. If a total want of probable cause is proved, malice may be implied. But although express malice is proved, some slight evidence of want of probable cause must be given.[1] Moreover it seems that such an action cannot be sustained unless it be shown that the commission has been superseded or that the party has been found on the inquisition not to be of unsound mind,[2] and such an action may be summarily dismissed as frivolous and vexatious, in virtue of the inherent jurisdiction of the Courts,[3] and apart altogether from sec. 330 of this Act (see *post*, where the law is discussed), on which a petitioner is also entitled to rely.

Action for maliciously suing out commission.

Want of probable cause must be proved.

Also that commission superseded, etc.

Such actions may be stayed.

An agreement to sue out a commission in lunacy is not void or illegal for maintenance or champerty, or as against public policy, or fraud on the jurisdiction in lunacy.[4]

Agreement to sue out commission.

A commission cannot be compromised so as to make the compromise binding on the alleged lunatic, as those who apply for the commission cannot maintain the alleged lunatic's competency in the face of their own proceedings,[5] sec. 90, subs. (1).

Compromise of commission.

Where several petitions are presented in the same matter, the petition first presented is the first to be opened.[6]

Several petitions.

The Court may, where the lunacy of a person is in question, interpose by making a provisional order for the care and custody of the person and the estate, until the lunacy is finally determined.[7]

Provisional orders for care and custody.

Thus in one case it was ordered that the custody of the person of a lunatic, *ad interim*, should be granted to his sister; and that a gentleman should be appointed receiver of the estate of the lunatic *ad interim*, if he would accept the office and give security to account, to be allowed by the Master:[8] and orders have repeatedly been made restraining parties

[1] *Turner* v. *Turner*, 1818, per Dallas, C.J., Gow N.P. 20; and *Incledon* v. *Berry*, 1805, Selw. N.P., per Le Blanc, J., 1006. As to liability of petitioner for costs, see notes to sec. 109, *post*.

[2] *Whitworth* v. *Hall*, 1831, 2 B. & Ad. 659; *Matthew* v. *Dickinson*, 1842, 7 Taunt. 399; *Kemp* v. *King*, 1842, C. & M. 396; *Atkinson* v. *Raleigh*, 1843, 3 Q.B. 79; *Metropolitan Bank* v. *Pooley*, 1885, L.R. 10 App. Cas. 214. These cases all relate to bankruptcy, but the principle on which they were decided is equally applicable to lunacy.

[3] *Metropolitan Bank* v. *Pooley*, *ubi sup.*

[4] *Persse* v. *Persse*, 1840, 7 Cl. & F., at p. 316.

[5] *Cumming* v. *Ince*, 1847, 11 Q.B. 112.

[6] *Re Mallorie*, 1849, 1 H. & T. 435; *re Brookman*, 1849, *ib.* 435; and cp. *re Bariatinski*, 1844, 13 L.J., N.S., Ch. 386, a case of petition and counter petition with reference to the appointment of a committee; and *re Wood*, 1860, 29 L.J. Ch. 54,—the priority of petition gives a *primâ facie* right to carriage of it, see *inf.* p. 272.

[7] *Re Heli*, 1748, 3 Atk., at p. 635; *re Holmes*, 1830, 4 Russ. 186; *re Naylor*, 1862, N.R. 173. If the case is urgent the Court will make the appointment upon an *ex parte* application; but the receiver must not receive any part of the property till he has given security, *re Fountain*, 1888, 37 Ch.D. 609.

[8] *Re Frank*, 11th Aug. 1825, Shelf. Lun. 160, 161; and cp. also *re Chapman*, alias *Dunn*, 1st Aug. 1829, *ib.* 161; *re Brand*, 11th Sept. 1830, *ib.* 162; *re Turner*, 23rd Dec. 1823, *ib.* 159, 161.

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Order restraining disposal of property.

from interfering in any way with the concerns of the alleged lunatic.[1] But this interference is provisional and arises *ex necessitate* in cases of emergency, and is only allowed as subservient to the inquiry, and while it is in progress; and so an order (1) restraining the disposal of the alleged lunatic's property, and (2) prohibiting the prosecution of the inquisition, was held to have been made without jurisdiction.[2] But provision should be made in the order for ample means of resisting the commission being furnished to those who act in the inquiry on behalf of the alleged lunatic,[3] etc.

Money for trying traverse allowed.

Thus in *re Turner*[4] it was ordered that the committees of the estate should pay to the lunatic's solicitor the sum of money he required for the purpose of trying a traverse (the precedent would hold good in an inquiry as well), on his undertaking to apply the same or a sufficient part thereof in the necessary expenses of the traverse, and to account for the money before the Master, the committees being at liberty to oppose the traverse. Again, in *re Bullock*,[5] the Court, pending an inquisition, sanctioned an allowance for the necessary household expenses of the alleged lunatic, and also an allowance payable to his solicitor for the expenses of preparing his defence upon the inquiry, on the undertaking of the solicitor to account either in lunacy or to the alleged lunatic, if on the petition for inquiry he proved to be of sound mind. The Court will decide how much is necessary for either of these purposes. Thus in *re Bullock*[5] only £200 was allowed for the expenses of the defence, although a sum of £300 was asked for.

Allowance for household expenses,

And preparation of defence.

Carriage of commission, given to party most likely to bring out facts.

The party likely to be most instrumental in attaining the object of a commission in lunacy, viz. to bring out all the facts,[6] gets the carriage of it.[7] Subject to this general and paramount consideration, however, the next natural relation if he desires it, and no objection exists, will, in the case of a contest, be preferred.[8] As between equally or almost equally near relatives, the preference will be given to the person presenting the first petition.[9]

Nearest relation.

In contest for committeeship party having carriage of commission not necessarily preferred.

In a contest for the committeeship of a lunatic, the party who has had the carriage of the commission is not on that ground entitled to any preference;[10] and in *re Webb*,[10] from which this proposition is taken, Lord Cottenham observed that it would be very improper if any rule to the contrary existed. Where the issuing of a commission in lunacy is opposed, or the carriage of it contested, the Court will not prospectively give leave to any party to propose himself as committee, in the event of the subject of the commission being found to be

[1] *Re King*, 15th Jan. 1827, Shelf. Lun. 159; *re Galloway*, 28th July 1827, *ib.*

[2] In *re Lawler, ex parte Walsh*, 1874, I.R., 8 Eq. 505.

[3] Shelf. Lun. 159.

[4] 1825, Shelf. Lun. 160.

[5] 1886, 35 W.R. 109.

[6] *Re Nesbitt*, 1847, per Cottenham, L.C., 2 Ph., at p. 246.

[7] *Re Green*, 1831, per Brougham, L.C., 2 Coop. *t.* C., at p. 163; *re Webb*, 1846, 2 Ph. 10.

[8] *Re Bedell*, 1809, per Eldon, L.C., 2 Coop. *t.* C., at p. 163; *re Anstie*, 1849, 1 Mac. & G. 200; *ex parte Tomlinson*, 1812, 1 Ves. & Bea. 59; *ex parte Le Heup*, 1811, 18 Ves. per Eldon, L.C., at p. 227.

[9] *Re Wood*, 1859, 1 De G. F. & J. 142; *re Bariatinski*, 1843, 1 Phill. 379.

[10] *Re Webb*, 1846, 2 Ph., at p. 12.

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of unsound mind, but in issuing the commission will direct that no proceedings be taken for the appointment of a committee until further order.[1]

Report by Commissioners deemed to be application.

Under sec. 100 (*post*) a report presented to the Lord Chancellor by the Commissioners in Lunacy recommending an inquisition is deemed to be "an application . . . supported by evidence" under this section.

Petition by direction of Masters.

In the case of applications under sec. 116 (*post*), a petition may be presented by direction of the Masters,[2] which extends not only to lunatics but to persons incapable through mental infirmity, arising from disease, of managing their affairs.[3]

Commission may be directed by Lord Chancellor.

Under 39 & 40 Geo. III. c. 94, sec. 4 (*post*), if any person, appearing insane, shall endeavour by intrusion to gain admittance into the sovereign's usual places of residence, and there be reason to apprehend danger to the sovereign's person, the Lord Chancellor may direct a commission to issue, and if the jury find him insane, may order his confinement during such time as there shall be reason to apprehend danger to the person of the sovereign. This provision does not appear to have ever been put into force, and it is now practically obsolete.

Judge in Lunacy how far bound to take notice of other judicial proceedings.

Except as regards Ireland (as to which see sec. 107, *post*) the Judge in Lunacy (definition of, sec. 108, *post*) is not bound to take notice of the proceedings in any Court of Lunacy out of England—except for purposes specifically described by statute, *e.g.* see sec. 131, *post*, and sec. 149, *post*. But declarations and requests by such Courts will receive great consideration, and will have effect given to them as far as possible. In *re Sottomaior*[4] this point arose. S., a Portuguese gentleman, whose domicile, property (with a very trifling exception), and family were in Portugal, became lunatic in England, and had been so for some years. A petition was presented by some relatives in England for an inquiry as to his state of mind. Proceedings in lunacy were at the same time taken in Portugal by his wife; and the Portuguese Court requested the English Court to inquire into the question whether, and *if so, from what time* he had been of unsound mind; and if he should be found lunatic, to give him into the custody of his wife (who, by Portuguese law, was his guardian, and the administratrix of his estate in Portugal), to be taken over to that country. James, L.J., held that although the Lunacy Regulation Act 1862[5] did not take away the power of the Court to direct such an inquiry where special circumstances rendered it desirable,[6] such an inquiry ought not to be directed in the present case, as it was not required for any purpose of the proceedings in England, and the finding might affect other parties who could not effectually intervene in the inquiry, and yet would probably be treated in Portugal as bound by it. The Court complied, however, with the latter part of the request of

Declarations and requests by other Courts receive great consideration.

re Sottomaior.

[1] *Re Webb*, 1846, 2 Ph., at p. 12.
[2] Rules of 1893, rr. 1 and 2, *post*.
[3] Rules of 1893, rr. 1 and 2.
[4] 1874, L.R. 9 Ch. 677.
[5] 25 & 26 Vict. c. 86, sec. 3.
[6] This view was dissented from in *re Danby*, 1885, 30 Ch.D. 320; and see sec. 98, subs. (1), *post*.

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the Portuguese Court, by giving the custody of S. to his wife after he had been found lunatic.

There is a broad distinction between legislation and judicial decision which deal with the personal status of an individual and create a consequential devolution of the title to property, and legislation and judicial decision which affect the management of particular persons without any determination of their status. Declarations of a competent Court with regard to the status of a person receive in foreign Courts a degree of consideration which cannot be paid to mere domestic legislation with regard to the management of property—directions with regard to management not consequential upon a determination of status.[1]

Especially declarations in regard to status.

re Barlow's will.

The case in which this distinction is drawn—*re Barlow's will*[1]—is one of some nicety. A lady detained in a lunatic asylum in New South Wales, but not found lunatic by inquisition, was entitled for life to the income (about £30 a year) of one-third of a testator's residuary estate, and was absolutely entitled to a fund of about £2000, which had arisen from accumulation of this income. She had for years been maintained by the colonial government at a total expense of £803. By the New South Wales Lunacy Act 1879 (42 Vict. c. 7) extensive *powers of management* of the property of "lunatic patients" (*i.e.* persons detained as lunatics, but not so found by inquisition) were given to the Master in Lunacy of New South Wales, and he was enabled to sue for and receive debts due to the patient, but *the Act did not vest the patient's property in him.* The Master claimed to have the accumulations which were in England paid to him, upon which the trustee paid them into Court under the Trustee Relief Act. He then petitioned to have them paid out to him. The Court of Appeal, affirming the order of Kay, J., ordered payment to him of the £803, and of the income of the remainder of the fund, so long as the patient should be detained as a lunatic in New South Wales, and authorised the trustee to pay to him the patient's share of the income of the residuary estate (which the trustee undertook to do), but (1) denied the Master in Lunacy's claim *as of right* to have the whole of the accumulations handed over to him, on the ground that there had been no actual vesting of the patient's property, so as to create a devolution of the estate; and (2), while stating that a trustee here, or the Court acting as trustee, was justified in paying over to the Master anything which the competent authority in New South Wales decided to be necessary for the maintenance or benefit of the patient, and that therefore the payments directed were rightly ordered, declined *in its discretion* to go further, no case having been made to show that more was required for the comfort or benefit of the patient.

In dealing with any property abroad of an alleged lunatic, the Court will exercise its powers in conformity with the *lex loci rei sitae.*[2]

Removal of aliens.

As to the removal of lunatic aliens to their own country, see sec. 71, *ante*, and notes thereon.

[1] Per Fry, L.J., *re Barlow's will*, 1887, 36 Ch.D., at pp. 297, 298.

[2] *Newton* v. *Manning*, 1849, 1 Mac. & 9 Mac. & G. 362.

As to procedure where alleged lunatic is out of the jurisdiction, see sec. 96, *post*, and notes thereon. Sec. 90 (2).

(2) Where the alleged lunatic is within the jurisdiction, he shall have notice of the application and shall be entitled to demand an inquiry before a jury. (Notice of application.)

This subsection re-enacts secs. 40 and 8 of the Lunacy Regulation Acts 1853 (16 & 17 Vict. c. 70) and 1862 (25 & 26 Vict. c. 86) respectively.

Alleged lunatic.—Definition of, sec. 341, *post*.

As to persons against whom commissions may issue, see notes to "whether a person," etc., in preceding subsection, *ante* p. 265.

Within the jurisdiction.—As to the jurisdiction in lunacy, see sec. 108, *post*. The jurisdiction in lunacy.

It extends to property within any "British possession" (sec. 110, *post*).

Notice.—The notice is by service on the alleged lunatic of a copy of the petition, with a notice thereon endorsed, signed by the petitioner or a solicitor. The notice is to be in Form 5 in the Schedule to the Rules of 1892 (*post*), or to that effect.[1] Service of the notice is to be effected personally on the alleged lunatic, or where personal service is impracticable or inexpedient, by delivery of the notice to some adult inmate at the dwelling-house, or usual or last-known place of abode of the alleged lunatic within the jurisdiction, and an affidavit of service stating particularly the time, place, and mode of service, and where there has not been personal service, the grounds of such service not having been made, is to be filed with the Masters.[2] Notice of application. Form and service of.

The object of the notice is to enable the alleged lunatic to demand a jury. See Form 5, Schedule to Rules of 1892, *post*. Object of law as to notice.

It was at one time not in strictness necessary that notice should be given to the alleged lunatic, whether within or out of the jurisdiction, or to any of his relatives not concerned in the application, either of the application for, or the execution of, an inquisition, unless apparently a *caveat* had been entered on his or her behalf, on the ground that the proceedings were *ex parte* and not conclusive.[3] But if a sufficient reason for notice was made out, on application to the Court, an order might be obtained that reasonable notice should be given to the party requiring it;[4] and in one case,[5] where notice of the execution of a commission had been directed to be given to a party who had an interest in respect of a contract with the supposed lunatic,

[1] Rules in Lunacy, 1892, r. 26. As to notice of report of Commissioners under sec. 100, see notes to that section, *post*, and Rules, 1892, r. 27.

[2] Rules of 1892, r. 29.

[3] Cp. *re Braithwaite*, per Lord Eldon, L.C., July 1826, 2 Coop. *t.* C., 164; and see the facts in this case, Shelf. Lun. 132.

[4] *R.* v. *Daly*, 1749, 1 Ves. sen. 269; and cp. *re Sir G. O. P. Turner*, 8th Dec. 1823, Shelf. Lun. 132; *re Braithwaite*, *ib.*; *re Bushnell*, 9th May 1821, *ib.* 132.

[5] *Ex parte Hall*, 1802, 7 Ves. 261.

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the Court, on the petition of such party to quash the commission, or for liberty to traverse the inquisition on the grounds that the commission had not been executed (as ordered) at the residence of the lunatic, and that the order as to notice had not been complied with, after much hesitation refused to quash the inquisition, but granted leave to the petitioner to traverse. Strong protests were, however, made from time to time [1] against the rule that notice was unnecessary, and the law was placed practically on its present basis by the Lunacy Regulation Acts 1853 (16 & 17 Vict. c. 70) and 1862 (25 & 26 Vict. c. 86).

Notice when unnecessary.

The alleged lunatic, whether within or out of the jurisdiction, is entitled to be present. If within the jurisdiction he is entitled to notice by this subsection, and it is submitted that the judge has no power to dispense with service (as to which *v. sup.*) of the notice in such cases, in spite of the wide terms of r. 24 of the Rules of 1892 (*post*), and no order is to be made on the petition till after the expiration of seven clear days from the service of the notice.[2] If he is out of the jurisdiction he is not entitled to notice, unless he or some one on his behalf has entered a *caveat* [3] against the order issuing, because the inquiry is in every case before a jury, sec. 96, *post.*

Parties other than the alleged lunatic are not entitled to notice, but the judge may order service of notice of an application for an inquisition upon any person.[4]

As to notice of execution of commission, see *post* p. 289.

Further inquiries in cases of doubt.

When the Judge in Lunacy is in any doubt as to the propriety of granting a commission, further inquiry may be directed into the circumstances with a view to sparing the alleged lunatic unnecessary vexation and expense.[5] One of the *medical* Chancery visitors is frequently asked to visit the patient and report. The *legal* Chancery visitor is never requested to undertake this duty—a fact which offers an instructive practical commentary on Lord Shaftesbury's "ordinary observer" theory.

Inspection of confidential reports made to the Judge in Lunacy in pursuance of such directions will under no circumstances be permitted.[6]

Demand for jury.

Shall be entitled to demand . . . jury.—The demand is made either by notice filed with the Masters at any time before the consideration

[1] See Shelf. Lun. 130 (*q*).

[2] Rules of 1892, r. 28, *post.* This rule applies also to orders on reports of the Commissioners in Lunacy under sec. 100, *post.*

[3] A form of *caveat* is given in *re Galpine*, 1808, 1 Coll. Lun. 197; 2 *ib.* 174; and see Appx., *post.*

[4] Rules of 1892, r. 24, *post.*

[5] *Re Hoblyn*, 1857, 29 L.T. 305. In this case separate reports by an independent medical man, the patient's ordinary medical attendant, and a clergyman with whom he was residing, as to the alleged lunatic's mental and physical state, the style in which he was living, and whether the existing arrangements were satisfactory to himself, were required; and cp. *re Langley*, 1822, Shelf. Lun. 110.

[6] *Re H. W. Strachan*, 1895, 1 Ch., per Lindley, L.J., at p. 444. Similarly reports by medical practitioners, under sec. 26, subs. (1) of the Act of 1891 (*post*), are privileged, *re B.*, 1892, 3 Ch. 194. As to inspection of evidence in support of application for inquisition generally, see *ante* p. 261.

Sec. 90 (2), (3).

How made.

When may be refused.

of the petition, or by the alleged lunatic, his counsel or solicitor, upon such consideration. The notice demanding a jury is to be signed by the alleged lunatic, and attested by a solicitor.[1] The Judge in Lunacy may refuse to comply with the demand if he is satisfied that the alleged lunatic is not mentally competent to form and express a wish in that behalf (sec. 91, *inf.*), and it appears to him on the evidence that an inquisition before a jury is unnecessary and inexpedient (sec. 92, *inf.*), but not otherwise, and even in such cases the Masters have power to direct an inquisition before a jury upon consideration of the evidence (sec. 93, *inf.*).

As to composition of jury, see sec. 97, *post*, and notes thereon. The only right to a jury is on the original inquiry. There is no right afterwards unless the lunatic traverse.[2]

Right to jury confined to original inquiry.

(3) Upon the hearing of the application, the alleged lunatic may withdraw any demand for a jury made by him.

(Withdrawal of demand for jury.)

This subsection substantially re-enacts sec. 9 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86), which permitted the alleged lunatic to withdraw the demand at "such hearing, by himself his counsel or solicitor, orally or by petition."

Withdrawal of demand after hearing of application.

re Crompe.

An interesting point of practice under subsection 9 of the Act of 1862 arose in *re Crompe*.[3] An alleged lunatic demanded a jury at the hearing of a petition for a commission; an order was made by the Lords Justices for an inquisition before a jury, and the Master fixed a day for the trial. Subsequently to the order, the solicitor to the petitioner received notice from the solicitors for the alleged lunatic that their client withdrew her demand, and an application was made to the Lords Justices by counsel for the petitioner to amend the order for the inquiry, by directing it to be held without a jury. The Lords Justices held that they had no power to entertain the application in the absence of the alleged lunatic, but stated that if she appeared the application might be treated as having been made at the hearing of the original petition. On a subsequent day the matter was again mentioned, and, the alleged lunatic appearing by counsel and withdrawing the demand for a jury, the original order was discharged, and an order was made on the petition for the usual inquiry before the Masters.

The present subsection clearly contemplates the withdrawal of a demand made either prior to, or at the hearing of, the application. The words are "any demand," and as, under the Rules of 1892, r. 29 *post*, a demand may be made, either by previous notice or at the hearing of the application, it follows that the latter demand may be

[1] Rules of 1892, r. 30. The same right exists and the same privilege is to be adopted in the case of a report by the Commissioners under sec. 100, *post*, or (*semble*) a direction by the Masters under rule 1 of the Rules of 1893, *post*.

[2] Per Jessel, M.R., in *re Talbot*, 1882, 20 Ch.D., at p. 272.

[3] 1869, L.R. 4 Ch. 653.

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withdrawn at the hearing as well as the former. It is conceived that the alleged lunatic must appear at the hearing (either by himself or by his counsel or solicitor[1]) if the demand for a jury is to be withdrawn, and that such an intimation to the petitioner's solicitor as was made in *re Crompe* (*sup.*) would still be insufficient. Such an extension of the original application as was allowed in that case would probably, however, still be allowed.

Hearing of application.

The hearing of the application.—See notes to "application" in subs. (1), *sup.*

Judge must be satisfied—(*a*) That there is case for inquiry; (*b*) that provisions of Acts, etc., have been complied with.

Strictly speaking, the petition is not set down for hearing at all, and the order for an inquiry is usually made of course. But the judge must be satisfied (*a*) on the evidence that there is a case for inquiry (as to "the evidence," see notes to "application" in subs. (1), *sup.*; as to the "case for inquiry," see notes to "whether a person," etc., in subs. (1), *sup.*); and (*b*) that the requirements of the Lunacy Acts, Rules, and practice as to the petition being presented by, or with, the consent or knowledge of the proper party (subs. (1), *sup.*), notice being given to the alleged lunatic under subs. (2), *sup.*, or any other person whom the judge directs (subs. (1), *sup.*), and affidavit of service of such notices (subs. (2), *sup.*) have been complied with. If the alleged lunatic, being within the jurisdiction, is served with notice under subs. (2), *sup.*; or if, being out of the jurisdiction, he or any one on his behalf has entered a *caveat* against the order issuing, and having received notice of the application, attends and opposes it, an order of course will not be made. Moreover, the Judge in Lunacy is not bound to order an inquisition merely because the fact of unsoundness of mind is sufficiently established to justify such an order (*v. sup.* p. 259), the statutory and other requirements above referred to have been complied with, and no opposition to the grant of a commission is made by or on behalf of the alleged lunatic. The true point for the consideration of the Judge in Lunacy is whether it is necessary for the benefit of the lunatic—with reference to his mental health and his property—that a commission should issue.[2] Thus, in *Brodie* v. *Barry*,[3] an application for a commission of lunacy against a lady, who was unquestionably a lunatic, under the care of her husband, who opposed the application, was refused, as it appeared that there was not anything in his conduct with reference to the care of either her property or her person which rendered such a proceeding necessary. Again, in *re Clare*,[2] a commission of lunacy was refused where the lunatic did not require the protection of the Court either for himself or his property, the object of the petitioner being to obtain a maintenance out of the estate. The welfare of the

Commission not granted unless necessary for benefit of lunatic.

[1] These words do not appear in the present subsection, but as under the Rules in Lunacy 1892, r. 30, *post*, a demand for a jury may be made by the alleged lunatic's counsel or solicitors, the withdrawal of the demand should not stand on a different footing.

[2] Per Eldon, L.C., in *re Tomlinson, ex parte Broadhurst*, 1812, 1 Ves. & Bea., at p. 59; and cp. *re J. B.*, 1836, 1 My. & Cr. 538; and *re Clare*, 1846, 3 J. & Lat. 571.

[3] 1813, cited in 1 Ves. & Bea., *ubi sup.*; and see 2 Ves. & Bea. 36.

lunatic being the object of proceedings in lunacy, the Court will, however, order an inquiry in a proper case without regard to the motives or alleged motives of the petitioner. Thus, in *ex parte Ogle*,[1] Lord Eldon issued a commission, although the mother of the lunatic, with whom he resided, resisted the application, and it was alleged that the petitioner, being a tenant to the lunatic and in arrear for rent, took proceedings to gain time. On the other hand, where a case for protection is not made out, and it appears that a petition has been presented from improper motives, the petition will be dismissed, and may be dismissed with costs.

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Inquiry may be ordered though motive of petitioner bad.

Aliter, if case for protection not made out.

The alleged lunatic.—Definition of "lunatic," sec. 341, *post.*

Any demand for a jury.—See notes to preceding subsection, *sup.*

91. Where the alleged lunatic demands a jury, the Judge in Lunacy shall in his order for inquisition direct the return of a jury, unless he is satisfied, by personal examination of the alleged lunatic, that he is not mentally competent to form and express a wish for an inquisition before a jury; and the Judge may, where he deems it necessary, and for the purpose of personal examination, require the alleged lunatic to attend him at such convenient time and place as he may appoint.

Demand of a jury by alleged lunatic.

This section re-enacts sec. 41 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Alleged lunatic.—Definition of "lunatic," sec. 341, *post.*

Demands a jury.—As to demand of a jury by the alleged lunatic, see notes to sec. 90, subs. (2), *sup.*

The Judge in Lunacy.—See sec. 108, *post*, and notes thereon.

Order for inquisition.—See notes to corresponding words in sec. 90, subs. (1), *sup.*

A jury.—As to number and composition of jury, see sec. 97, *post*, and notes thereon.

As to other cases in which inquisition will be tried by jury, see notes to sec. 90, subs. (2), *sup.*

Personal examination.—In practice the Judge in Lunacy frequently directs a previous examination and report by one of the medical Chancery visitors (see *sup.*, p. 276), or by a medical man appointed by himself. If the Judge in Lunacy feels, upon the examination of the alleged lunatic, that it is uncertain what his intentions in demanding a jury were, or that he did not know his own mind, he

Personal examination.

[1] 1808, 15 Ves. 112. In such cases, however, the Court will, if satisfied as to the improper motives of the petitioner, take care that he has no control over the person or property of the lunatic, *re Clare*, *ubi sup.*

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might (*semble*) hear evidence as to his state of mind, see by what parties he is surrounded, and what are their objects and views.[1] This is, however, a discretion that would be exercised with great caution, as such a proceeding involves both two trials and a certain prejudging of the issue of unsoundness of mind. See next note.

"Mentally competent, etc." Whether demand is act of lunatic's free will.

Mentally competent, etc.—The Judge in Lunacy has only to ascertain whether the demand for a jury is the act of the free will of the alleged lunatic, and not whether the will is that of a person of sound or unsound mind. There are many cases in which it is possible for a lunatic to have and express volition and state views as clearly as a sane man; and where, in the opinion of the Judge in Lunacy, there is a plain and sufficient expression of free will, a jury cannot be refused, although the Judge in Lunacy might think it beneficial to the alleged lunatic, on the ground either of exposure or expense, that a trial by jury should not be directed.[2] As the examination of the alleged lunatic by the Judge in Lunacy is directed to the issue, and conducted on the principles, above indicated, this subsection is not fairly open to the charge of prejudging the question of unsoundness of mind, although it does, to a certain extent, involve a double inquiry. See preceding note.

Though lunatic not mentally competent judge may order inquiry before jury.

Although the Judge in Lunacy is satisfied that the alleged lunatic is not mentally competent within the meaning of the subsection, he might nevertheless direct the inquisition to be before a jury if he considers that mode of trial necessary and expedient, see sec. 92, *inf.* But this contingency is not likely to occur in practice.

Require.—The requisition may be made by a simple oral direction to the parties acting for the alleged lunatic.

Convenient time and place.—The health of the alleged lunatic is considered. Any allegation that the health of the alleged lunatic is not such as to render it desirable for him to attend the Judge in Lunacy at the time or place fixed should be supported by affidavit.

Cases where a jury may be dispensed with.

92. Where the alleged lunatic does not demand a jury, or the Judge in Lunacy is satisfied by a personal examination that he is not mentally competent to form and express a wish in that behalf, and it appears to the Judge, upon consideration of the evidence, and of the circumstances of the case, to be unnecessary or inexpedient that the inquisition should be before a jury, and he accordingly does not in his order for inquisition direct the return of a jury, then the Masters shall, without a jury,

[1] *Re Cumming*, a case of traverse, 1852, 1 De G. M. & G., per Lord St. Leonards, L.C., at p. 555.

[2] Cp. *re Cumming*, per Knight-Bruce, L.J., *ubi sup.*, at p. 557.

personally examine the alleged lunatic, and take such evidence, upon oath or otherwise, and call for such information as they think fit or the Judge directs, in order to ascertain whether or not the alleged lunatic is of unsound mind, and shall certify their finding thereon. Sec. 92.

This subsection re-enacts sec. 42 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Alleged lunatic.—Definition of, sec. 341, *post.*

Demand a jury.—See notes to sec. 90, subs. (2), *sup.*

The Judge in Lunacy.—See notes to sec. 108, *post.*

Personal examination.—See notes to sec. 91, *sup.*

Mentally competent.—See notes to sec. 91, *sup.*

It appears, etc.—The Judge in Lunacy might direct an inquisition before a jury, although the alleged lunatic was not in his opinion mentally competent to form and express a wish for one, if he considered it necessary or expedient. But the point is not likely to arise.

Evidence, i.e. the evidence in support of the petition, as to which see notes to "application" in sec. 90, subs. (1), *ante*, the report (if any) of a medical man appointed by the Judge in Lunacy to examine the alleged lunatic, and any evidence taken by the Judge in Lunacy on his own personal examination.

Does not in his order.—See note to "it appears," *sup.*, see Forms of Order, Appx., *post.*

The judge may direct an issue to be tried in the High Court (sec. 94, *inf.*).

The return of a jury.—As to number and composition of jury, see sec. 97, *post.*

The Masters.—Definition of, sec. 341, *post.*

As to the Masters, see sec. 111, *post, et seq.*

Procedure after order for inquiry made.

The present may be the most convenient place to consider the procedure on the trial of inquisitions.[1]

The question of the carriage of the commission has been already considered, see *sup.* p. 272.

The law as to the costs of proceedings in lunacy is discussed hereafter, sec. 109, *post*, and notes thereon.

When the order for the inquiry has been made, the Masters prepare and deliver it to the solicitor who has the carriage of the commission. The order is engraved on parchment, carrying a £2 stamp, and signed by the Judge in Lunacy.[2] On obtaining the order, the solicitor takes it with the office copies of the affidavits previously filed in support of the petition (as to which, see *ante*, p. 259) to the Office of the Masters in Lunacy. It should be remembered that an alleged

[1] As to procedure up to and including the issue of the order for an inquiry, see notes to sec. 90, subs. (1), *sup.*

[2] Elmer, p. 19. If the estate is to be exempted from fees under sec. 148, subs. (4), *post*, the fact is stated in the order.

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Delay in prosecuting commission.

lunatic is entitled as of right to have an inquiry which has been ordered prosecuted at once, or to have the order for such inquiry discharged;[1] and in an old case,[2] a person who kept a commission of lunacy by him for several years was held guilty of contempt of Court, and not only the commission but the petition under it were discharged with costs. On attending at the Masters' Office with the order for the inquiry, the solicitor should be prepared with information as to the most convenient place for holding the inquisition.[3]

The order of the Judge in Lunacy directs the inquisition to be held (1) at or near the place of abode of the alleged lunatic if within the jurisdiction;[4] and (2) where the alleged lunatic is not within the jurisdiction (*a*) at the place in England where his mansion-house or other property is situated,[5] (*b*) if he have no such property, then at his English residence,[6] (*c*) if he have no such residence, then in the county of Middlesex.[7]

Lunatic within jurisdiction. When inquiry not held locally. Strong local feeling. Convenience of witnesses, etc., not generally regarded.

(1) This rule is not, however, inflexible, and it has been occasionally departed from where, *e.g.*, there was reason to believe that a strong local feeling as to the proceedings existed in the neighbourhood where the alleged lunatic resided,[8] and although it was stated by Lord Eldon, in *ex parte Baker*,[4] that the convenience of witnesses, much more of counsel, is no ground for an exception to the general rule, cases of transfer primarily on the ground of the convenience of witnesses have occurred, and there would seem to be no reason why, *ceteris paribus*, the convenience of counsel also might not be considered. Thus, in *re Green*,[9] Lord Brougham took into consideration the convenience of witnesses upon the inquiry, and directed the supposed lunatic to be conveyed to London, where he had been for some time.

[1] *Re Naylor*, 1862, 1 N.R. 173.

[2] *Re Anon.* 1740, 2 Atk. 52.

[3] The Masters were formerly consulted at this stage with reference to the question whether the inquiries after inquisition found should be conducted immediately after the inquisition closes. But see p. 336, *post*.

[4] *Ex parte Southcot*, 1751, 2 Ves. sen. 405; *ex parte Hall*, 1802, 7 Ves. 261. The removal of the alleged lunatic by force to another county than that named in the order does not change his place of residence, *ex parte Smith*, *ubi inf.*, at p. 6; *ex parte Baker*, 1815, 19 Ves. 340; *ex parte Smith*, 1818, 1 Swanst. 4.

[5] *Ex parte Southcot*, *ubi sup.*

[6] *Re Stevens*, 1819, 2 Coop. *t.* C. 150.

[7] *Re Hodsell*, 1743, cit. 1 Ambl. 110; *re Lyon*, 1836, 2 Coop. *t.* C. 150; *re Webb*, 1846, *ib.* 145; *re Scott*, 1874, 22 W.R. 748.

[8] *Re Anon.* 1881, 18 Ch.D. 26.

[9] 8th April 1831, cit. Shelf. Lun., at p. 123. Apparently cited as *re Bream*, in *re Jepson*, 1838, 2 Jur., at p. 201. *Re Jepson* is frequently quoted as a contrary authority, but it is not really so. There, it is true, Lord Cottenham refused a transfer from Linton, near Ross, to Gloucester, although a great many witnesses to be examined at the trial resided at the latter place, of which the alleged lunatic was a native; but he did so expressly on the ground that the persons resident at Linton, where the accused had lived for many years, were the most likely to be conversant with his recent habits and life, and were therefore the fittest witnesses to be produced at the inquiry. *Ex parte Smith*, *ubi sup.*, is a somewhat similar case. There it was important to ascertain from what time the alleged lunacy commenced, and the commission was directed to be executed in a neighbourhood where the persons most likely to be able to give evidence on this subject resided. This point could hardly arise now. See sec. 98, subs. (1), *post*.

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Or to save expense.

Again, in *re Mills*,[1] where the alleged lunatic never had any fixed place of residence, and lived chiefly in lodgings, Lord Lyndhurst directed the commission to issue into Middlesex, the county of the principal witness. In *re Waters*,[2] to avoid the inconvenience and expense of taking medical witnesses down from London (the property of the alleged lunatic being small), a commission was directed to issue into Middlesex, although the alleged lunatic was residing in Herts.

The Judge in Lunacy has a discretion to quash an inquisition executed at a place other than that named in the order.[3]

Lunatic not within jurisdiction.

(2) As to the issue of a Commission to take evidence abroad, where the alleged lunatic is out of the jurisdiction, see *ante* p. 263.

Order to prevent removal out of jurisdiction. When made.

The Judge in Lunacy may make an order to prevent the removal of an alleged lunatic out of the jurisdiction even before a Commission is issued.[4]

Unless in futherance of object of inquiry.

But such an order will not be made except upon affidavits satisfying the Court that the party is a fit subject of a commission in lunacy,[5] and that there is a reasonable apprehension of an intended removal.[6]

Order to bring back lunatic into jurisdiction.

Where the alleged lunatic has been taken out of the jurisdiction before the commission issued, an order may be made that he be brought back to England. The order should provide for the appointment by the Master of a proper person to repair to the place where the alleged lunatic is, to inquire whether he can be brought to England without danger or injury to his health, and, if so, to bring him back.[7]

An order may also be made for the protection of the alleged lunatic from confinement if he should come to England to attend the inquiry.[8]

Trial of the inquisition. Where held.

The inquiry is held at the residence of the alleged lunatic, if it contains sufficient accommodation for the purpose, failing which, at a Court if one is available, or, if there is no Court, at a convenient inn.[9]

After these preliminaries have been settled, the Masters appoint

[1] Feb. 1830, cited in 2 My. & Cr. 39, n. (*a*). In *re Jervis*, 14th Aug. 1829, Shelf. Lun. 127, n. (1), where the supposed lunatic had a town and country residence, both in Middlesex, the commission was directed to be executed at or near either of such places of abode as the Commissioners should direct.

[2] 1836, 2 My. & Cr. 38.

[3] *Ex parte Hall*, 1802, 7 Ves., at pp. 263, 264.

[4] *Lady Marr's case*, 1 Ambl. 82; *re Lawler, ex parte Walsh*, 1874, I.R. 8 Eq. 506. In *re Frank*, 25th Feb. 1825, Shelf. Lun. 129, an order to restrain the removal of the supposed lunatic out of the jurisdiction was made upon the petition for a commission, the hearing of which was postponed.

[5] As to evidence required for this purpose, *v. ante* p. 259.

[6] Shelf. Lun. 129.

[7] *Re Wykeham*, 1823, Turn. & Russ. 537. See form of order at p. 538, and *post*, Appx.

[8] *Re Naylor*, 1862, 1 N.R. 173; and cp. *re Dyce Sombre*, 1844, 1 Ph., at pp. 438-9—a case of supersedeas, where the lunatic had escaped from the custody of the person having the charge of him, pending the appointment of a committee, and had gone to Paris. The committee of the person undertook that if he would return to England no restraint would be put upon him, pending the determination of the supersedeas, unless by the direction of the Lord Chancellor; and the Lord Chancellor said that no such restraint would be imposed unless some act of violence rendered it necessary.

[9] Elmer, p. 22. The Masters prefer a Court to an inn, as involving less expense to the estate.

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Masters' precept.

a day for holding the inquiry,[1] and sign the precept, which is to be prepared by the solicitor having the carriage of the commission, and has a seal annexed to it. If the inquiry is to be by jury, the precept is addressed to the sheriff of the county in which the inquiry is to be made, and directs him to summon a jury formerly of twenty-four, but now in practice of thirty-four, to make the inquiries directed by the order. As to the number, composition, etc., of the jury, see notes to sec. 97, *post*.

In this case the precept should be delivered by the solicitor to the under-sheriff of the county.

If the inquiry is to be without a jury, the precept is addressed to the solicitor having the carriage of the commission, and should be retained by him.[2]

Proceedings open to public. Restrictions on right of attendance at cost of estate.

Whether the inquiry is with or without a jury, and wherever it is held, the proceedings are open to the public.[3]

But restrictions have been placed on the right to attend and take part in the inquisition and subsequent proceedings at the cost of the estate.

The following rules are thought to express accurately the practice in regard to this subject:—

1. Special leave when needed.

1. With the exception of the alleged lunatic and the persons having the carriage of the commission, or acting on his behalf, no one can take part in the inquiry without the special leave of the Judge in Lunacy.[4] This rule is a relic of the old conception of the inquisition as an *ex parte* proceeding, which was not conclusive upon any one.[5] Application for leave to attend may be made on the hearing of the application for an order. The Judge in Lunacy[6] may, however, make an order giving liberty to attend subsequent to the order for the inquisition.[7]

When to be applied for.

How application to be made.

Application for liberty to attend should be made by summons at Chambers before the Masters,[8] unless the Judge or Master otherwise directs;[9] and if this rule is disregarded, no further costs would be allowed than would be allowed upon a summons.[10]

2. Considerations on which grant of leave depends.

2. In deciding whether or not to give liberty to attend, the Court has regard to the same considerations that determine the question of the carriage of the Commission,[11] viz. the benefit of the alleged lunatic

[1] The Masters take inquiries in rotation, Elmer, p. 22. All matters connected with the same lunacy are, as far as convenient, to be dealt with by the same Master, Rules of 1892, r. 15 *post*. No warrant from a palatinate jurisdiction is required, as in certain other cases, for summoning a jury in any such jurisdiction, the proceeding being a prerogative proceeding, Elmer, p. 28.

[2] Elmer, p. 22. See forms of precept in Appx., *post*.

[3] Cp. 1 Hen. VIII. c. 8, and Elmer, p. 27.

[4] *Re Clements*, July 1831, 2 Coop. *t.* C. 166.

[5] Shelf. Lun. p. 131. Another consequence of the same rule was that formerly it was not necessary that notice should be given to the alleged lunatic of the proceedings against him, *v. ante* p. 275.

[6] See sec. 108, *post*.

[7] The Masters have now (Act of 1891, sec. 27, subs. (1)) the powers of the Judge in Lunacy in regard to management and administration, *v.* sec. 116 of the Act of 1890, *post*, *et seq.*; they have power to make orders giving liberty to attend under the rules of 1892, r. 40.

[8] See form of summons, *post* Appx.

[9] Rules of 1892, r. 19.

[10] *Ib.* r. 21.

[11] See *ante* p. 272.

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Elucidation of facts. Relationship. Interest.

and the elucidation of the truth.[1] The *mere fact* of relationship,[2] or the existence of an interest in the estate of the alleged lunatic,[3] while undoubtedly in either case a matter that the Court will consider in determining whether, and if so, on what terms, to grant liberty to attend,[4] does not entitle any one to an order; and as the grant of liberty to attend is purely in the discretion of the Court,[5] any conditions as to the costs of such attendance[6] which the Court thinks fit to impose may be annexed to it. In one case the applicant was granted leave to attend at his own cost;[7] in another the condition was annexed that the applicant's costs should not be allowed if it appeared on the return of the commission that there was no good ground for the application.[8] No condition will now be annexed that the applicant should consent to be bound by the verdict.[9]

Conditions as to costs.

Attendance of witnesses procured by summons.

Service of.

The attendance of witnesses at the inquiry, whether with or without a jury, is procured by a summons under the hand and seal of the Master.[10] Blank forms of these summonses may be obtained at the stationer's at the Office of the Masters in Lunacy, and the solicitor having the carriage of the commission should fill up and address a sufficient number of them and present them for the Masters' signature and seal. They are to be served by delivery of a true copy, and production of the original in the usual way.[11] The power of the Master to issue summonses is incident to his office,[12] and is also expressly confirmed by sec. 114, *post*, and any person disobeying any summons or order for attendance or production, made as above described, will be guilty of contempt.[13] If the alleged lunatic or any person having the alleged lunatic in his custody refuses or is unwilling to attend or produce him, as the case may be, an order to attend in the former case, and a warrant for the production of the alleged lunatic in the latter, written on paper, should be signed and sealed by the Master, and a copy of this should be served on the alleged lunatic or the person having the alleged lunatic in his custody. See form of order, *post* Appx., and form of warrant for production, *post* Appx.

The Master has power under the joint provisions of sec. 94, subs. (2), and sec. 99 of the Act of 1890, *post*, as amended by sec. 26 of the Act of 1891, *post*, to order a writ of attachment to issue

[1] *R.* v. *Daly*, 1 Ves. sen. 269. Where it is for the interest of all parties that the facts should be ascertained, the Court will give leave to attend, though it occasion additional expense, unless the estate is a very poor one, *re Nesbitt*, *inf.*

[2] *Re Nesbitt*, 1847, per Lord Cottenham, L.C., 2 Ph., at p. 246.

[3] The Court will not grant legatees under a will liberty to attend proceedings in lunacy, at least where there are next-of-kin, *re Scarlett*, 1873, 8 Ch. 739, distinguishing *re Webb*, 1846, 2 Ph. 10.

[4] *Ex parte Snook, re Watts*, 1845, 1 Ph. 512; *re Richards*, 1852, 1 De G. M. & G. 719; and cp. *re Parkinson*, 1841, 5 Jur. 547.

[5] *Ex parte Snook, re Watts*, *ubi sup.*

[6] *Re Richards*, *ubi sup.*

[7] *Re Webb*, 1846, 2 Ph., at p. 13.

[8] *Re Parkinson*, *ubi sup.*, and cp. *re Richards*, *ubi sup.*

[9] *Re Nesbitt*, *ubi sup.*, overruling *ex parte Snook*, etc., *ubi sup.*, and *ex parte Newbury*, cit. 1 Ph., at p. 513.

[10] See form of summons, *post* Appx.

[11] Pope, p. 68.

[12] Cp. *re Lund*, 1802, per Lord Eldon, L.C., with regard to the Commissioners of Lunacy, 6 Ves., at p. 783.

[13] *Lord Wenman's case*, 1721, 1 P.W, 701.

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Enforcement of attendance.

against an alleged lunatic for the purpose of enforcing his attendance. But in ordinary cases he ought to refer the matter to the Court in Lunacy.[1] This subject is discussed in the notes to sec. 94, subs. (2), *post*.

Order giving liberty of access to alleged lunatic.

How obtained.

An order is sometimes also made giving to the petitioner for the inquisition, or for leave to attend and oppose it,[2] liberty of access by himself and his solicitor, and such medical advisers as he may appoint to the alleged lunatic, for the purpose of ascertaining his actual state of mind. This order should be obtained on summons at Chambers before the Master,[3] and not by petition,[4] unless the Judge or Master otherwise directs. The Masters prepare the minutes of the proposed order, and bring the application with the evidence and the minutes before the Judge.[5] The Masters have apparently power to refuse to make an order. But in this case there is an appeal to the Judge. See Rules in Lunacy, 1892, r. 11, *post*.

Examination by medical witnesses or Chancery Visitors.

If the medical witnesses for the alleged lunatic see him alone, the medical witnesses on the other side are entitled to the same opportunity.[6]

If disputes arise as to the terms of access, the Court may order two of the Visitors in Lunacy to see the alleged lunatic and report.[7]

The death of the alleged lunatic terminates the proceedings.[8]

Duplicate forms of inquisition.

Duplicate forms of the inquisition in blank, one on paper, the other on parchment, are prepared beforehand in the Master's office in order that they may be filled up and signed without delay at the close of the inquiry, see *post*.

Proceedings where jury. Reading of commission.

Where there is a jury, the inquiry is opened by the under-sheriff calling over the panel. The general commission and special order, or special commission (as to general and special commissions, see notes to secs. 112 and 113, *post*), are then read over, and the jury are sworn.

As to personal examination of alleged lunatic, see *inf.* p. 287.

As to the scope of the inquiry, see notes to sec. 98, subs. (1), *post*.

Proceedings where no jury.

Where there is no jury, counsel for the petitioner opens the case at once, and then calls evidence in support of it. As to personal examination of alleged lunatic, see *inf.* p. 287. Counsel in proceedings against an alleged lunatic is in a position similar to that of counsel for the prosecution. He is bound to recollect that he is himself an officer of justice, that it is not his duty to keep back anything, but that it is his duty to compel the production before the Court of anything likely to tell in favour of the lunatic. As in a

Duty of counsel in inquisitions.

[1] *Re B.*, 1892, 1 Ch. 459.

[2] Cp. *re Fletcher*, 25th April 1832, Shelf. Lun. 126, where the substance of the order is given; *re Bariatinski*, 1847, 1 Ph., at p. 379.

[3] Rules in Lunacy, 1892 r. 19.

[4] If a petition should be directed, a form for it will be found in Shelf. Lun., at p. 872.

[5] Rules in Lunacy, 1892, r. 21. If the application is made by petition otherwise than by direction of the Judge or Master, no further costs will be allowed than would be allowed upon a summons.

[6] *Re Anon.*, 1881, 18 Ch.D., at p. 29.

[7] *Ib.* See form of order at pp. 27 and 28, and *post* Appx.

[8] Rep. 127 (*a*).

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criminal case, he is bound to see that everything is put before the Court which it is reasonable and proper that it should have before it, in the interest of the alleged lunatic as well as of the petitioner.[1] The witnesses are examined, cross-examined, and re-examined in the usual way.

Personal examination of alleged lunatic under Act of 1890.

Under the Lunacy Act of 1890 the practice as to the personal examination of the alleged lunatic on the trial of inquisitions was somewhat complicated. If the inquisition was by the Master, without a jury, it came under this section at the commencement of the proceedings; if the inquisition was with a jury, it was taken at the close of the evidence for the petitioner; if the inquiry was by means of an issue in the High Court, there was, if the alleged lunatic was within the jurisdiction, a double examination—first before the evidence was taken, and then at the close of the proceedings, unless the Judge who tried the issue otherwise directed, see sec. 94, subs. (2), *post*.

Under Act of 1891.

Sec. 26, subs. (1) of the Act of 1891, *post*, has now, however, extended the provisions of sec. 94, subs. (2) of the Act of 1890 to *all inquisitions* (*semble*, whether with or without a jury), and the Masters may for the purpose of inquisitions held before them exercise the powers conferred by that subsection upon the Judge who tries the issue.

How held.

The examination of the alleged lunatic may be on oath or otherwise (sec. 92), and may take place either in open Court or in private as may be directed (sec. 94, subs. (2), *post*, and sec. 26, subs. (1) of the Act of 1891, *post*). Formerly the examination was, according to the established practice of the Masters, held in private. In determining whether to hold a public or a private examination, the Masters will have regard to the health and condition of the alleged lunatic.

Object of.

The personal examination is for the purpose of assisting the Master or the jury in forming an opinion as to the alleged lunatic's state of mind; and the alleged lunatic has a right to insist on its taking place.[2] The findings ought to be based both on the testimony of other witnesses and on the information derived from personal examination and inspection, and an inquisition will not be quashed on the ground that more weight has been attached to the latter kind of evidence than to the former.[3]

Execution of commission where alleged lunatic absent.

If the alleged lunatic is out of the jurisdiction and, *semble* if measures taken to secure his production (*v. ante* p. 285) fail, it would seem that the commission may be executed in his absence.[4] If he is merely secreted within the jurisdiction, and not produced, the commission, if executed in his absence, may be superseded.[5]

Evidence on inquisition, without jury.

The Master, if sitting without a jury, may take evidence on oath

[1] Per Bowen, L.J., 1892, *re B.*, 3 Ch., at p. 198.

[2] *Ex parte Cramner*, 1806, 12 Ves., at p. 455, sometimes cited as an authority for this proposition, is only an authority in favour of the right of the alleged lunatic to be present at the execution of the commission.

[3] *Re J.B.*, 1836, 1 My. & Cr. per Lord Cottenham, L.C., at pp. 542, 543.

[4] *Re Halse*, 1743, cited 2 Ves. sen., at p. 403.

[5] *Ib.*

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With jury.

or otherwise, and call for such further information as he thinks fit, or the Judge in Lunacy has directed, sec. 92, *post*. Where there is a jury, the evidence must be on oath, but may be either oral, or partly oral and partly by affidavit, as the Master directs.[1] The Master may administer the oath to any witness, whether his deposition or affidavit is to be used before him or not,[2] and every person who has made an affidavit is liable to cross-examination by or before the Master, and after cross-examination may be re-examined.[3] As to form, contents, etc., of affidavits, see Rules in Lunacy, 1892, rr. 89-91, *post*.

Certificate of Master for jury.

The Master, if sitting without a jury, may, on consideration of the evidence, certify that inquisition before a jury is expedient, see sec. 93, *post*.

Close of proceedings.

At the close of the evidence for the petitioner, counsel for the petitioner sums up his case. Counsel for the alleged lunatic then opens his case, and calls evidence in support of it. Counsel for the petitioner then replies, after which the Master, if sitting without a jury and if not desirous to use the powers of further inquiry given by this section, certifies his finding, and his certificate has the same effect as an inquisition taken upon the oath of a jury, sec. 95, *post*.

If the inquisition is with a jury, the Master sums up the evidence, and the jury return their verdict, in which twelve at least must concur, whether the alleged lunatic is found of unsound mind or not. See sec. 97, *post*, and 1 Hen. VIII. c. 8.

Preparation of return.

After the verdict has been returned, the duplicate inquisitions are completed by filling up the blanks left in them (see *ante* p. 286), and the inquisition is read over, and if it is consistent with the verdict the form on paper is signed, but not sealed, by the jurymen assenting to the verdict.[4] The parchment form is then sealed with the seals of the jurymen and Master, who also signs it.[5] Statutes under Edward III. (34 Edw. III. c. 13; 36 Edw. III. c. 13) required the inquisition to be by indenture. The former of these statutes was repealed by 42 & 43 Vict. c. 59, and the latter by the Escheat (Procedure) Act 1887. But the Escheat Rules 1889 do not apply to inquisitions *de lunatico inquirendo*, and the indenture is still preserved. Both forms are then handed by the foreman of the jury to the Master, who signs each, annexes the one on parchment to the order for the inquisition, adding to it the following or some other similar return: "By virtue of Her Majesty's general commission and of this order (or of Her Majesty's general commission and these orders, or of Her Majesty's special commission), I have made the inquiry thereby directed, as appears by the inquisition hereto annexed,"[6] and returns the inquisition on paper to the solicitor having the carriage of the commission, who retains it as a certificate for the purposes of

[1] Rules in Lunacy, 1892, r. 85, *post*.

[2] *Ib.* r. 86, *post*.

[3] *Ib.* r. 88, *post*.

[4] Elmer, p. 29. Dissenting jurymen do not sign; cp. *re Windham*, 1862, 31, L.J. Ch., N.S., at pp. 721 and 723.

[5] Cp. *Lord Powis's case*, 1 & 2 Eliz. Dy. 170 (*a*). An inquisition not so indented has been held void, *re Barantine*, 4 Hen. V., cited Dy. 170 (*b*). As to grounds for quashing inquisition, see *post*.

[6] Elmer, p. 29. See forms of inquisition in Appx. *post*.

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the fees of the jury, or to guard against any alteration in the terms of the inquisition. The commission or order, with the inquisition on parchment[1] annexed, is then filed by the Master in the central office, where an office copy can be obtained if required.

Time within which return to be made.

Under the old practice[2] the return to a commission had to be made within a month after its execution, under a penalty.[2] But the statutes imposing this obligation were repealed by the Escheat (Procedure) Act 1887 (50 & 51 Vict. c. 53), and no other specific provisions of the same kind have been substituted for them in the Lunacy Acts.

Loss of commission or order.

On the accidental loss of the commission or order after the inquisition is completed, the Court may order a duplicate commission or order to be prepared, and the Master will annex to such duplicate when sealed the inquisition which has been taken, and return the same forthwith.[3]

Quashing of inquisition.

The grounds on which an inquisition may be quashed remain to be considered. They may be summarised under two heads: I. *Irregularity in the proceedings.* II. *Inconsistency between the return and the commission.*

I. Irregularity in proceedings. Improper refusal to hear evidence. Misconduct.

I. *Irregularity in the proceedings.* — Thus inquisitions may be quashed—(1) where the party executing the commission improperly[4] refused to hear evidence; (2) where there has been misconduct on the part of the person executing the commission or of the jury[5] (there is little authority on the question what will constitute such misconduct, but slight evidence of misconduct or evidence of trivial irregularities will not suffice, and an allegation that the jury assigned more weight to their own examination of the alleged lunatic than to other evidence is no ground for quashing an inquisition;[6] the matter would probably be determined by the well-known principles and cases applicable to judges, arbitrators, etc.[7]); (3) where the commission has been executed at a place other than that named in the order or without notice to the alleged lunatic, or any other person required by the order.[8]

Contravention of order.

A curious case recorded by Paris and Fonblanque[9] deserves

[1] *Moile* v. *Earl of Warwick*, 29 & 30 Eliz. 1 Leon. 65. If there is any clerical error or omission in the parchment inquisition discovered after the return has been made, it seems that the Court may order the duplicate on paper to be filed instead, *re Laugham*, 1837, 1 Jur. 375.

[2] Cp. 8 Hen. VI. c. 16; 18 Hen. VI. cc. 6 and 7; 23 Hen. VI. c. 16; and 1 Hen. VIII. c. 8; and see *re Matthew*, 18th Nov. 1828, Shelf. Lun. 136. As to the power of the Master to inquire into delays, see Rules in Lunacy, 1893, r. 2 (1), *post*.

[3] *Ex parte Raine*, 1816, 19 Ves. 589.

[4] *Anon.*, case referred to in *R.* v. *Daly*, 1749, 1 Ves. sen., at p. 270. The word *improperly* does not appear in the citation, but clearly must be implied, as the Master in Lunacy has undoubted authority to reject evidence as inadmissible.

[5] *Ex parte Roberts*, 1743, 3 Atk., at p. 6; *Rochefort* v. *Lord Ely*, 1768, 1 Ridg. P.C., at p. 541.

[6] *Re J.B.*, 1836, My. & Cr., at p. 542.

[7] Cp. *re Hopper*, 1867, L.R. 2 Q.B. 367, *Allinson* v. *General Council of Medical Education*, 1894, 1 Q.B. 750.

[8] *Ex parte Hall*, 1802, 7 Ves. 260. Lord Eldon did not quash the inquisition in this case, but clearly thought that he had power to do so.

[9] *Med. Juris.*, p. 294 n. (*a*).

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notice, though it is not very likely to recur. An alleged lunatic when brought before the jury the first time for examination behaved himself rationally; in the interval between the first and second examination he drank a considerable quantity of alcoholic spirits and bottled porter, and on the second examination the jury, ignorant of his potations, and struck by his altered demeanour, found him lunatic. The inquisition was quashed.

II. Variance between return and commission.

II. *Inconsistency between the return and the commission.*—Subject to the observation that in any inquisition a lunatic may now be found incapable of managing his affairs, though not himself (see sec. 98, subs. (2), *post*),[1] the commission and the verdict must be consistent, and in default of such consistency the return may be quashed. The growth of the law as to the scope of an inquisition has been already traced, *ante* p. 268. It is conceived that verdicts such as appeared in the old cases, *e.g.* "not sufficient to manage his person and estate"[2]; "not a lunatic but incapable"[3]; "not a lunatic yet not proper to take care of his affairs during his fits"[4]; "worn out with age and incapable of managing her own affairs"[5]; "a lunatic enjoying lucid intervals, and during such intervals competent," etc.,[6] would still be avoided for repugnancy.

Returns why avoided for repugnancy.

The alleged lunatic has a right to traverse[7] (see *post* p. 306), and for that reason, and also because of the interference with the liberty and property of the subject which is based upon it, the verdict must be expressed in the terms prescribed by law.[8] It seems that a special verdict cannot be returned,[9] and where a jury state their premisses the conclusion must follow logically from them.[10] Thus where the jury found "that the party is not a lunatic, but that partly from paralysis and partly from old age his memory is so much impaired as to render him incompetent to the management of his affairs, and *consequently* of unsound mind," the inquisition was quashed.[10]

Procedure where inquisition quashed.

Where an inquisition is quashed a new commission,[11] and not a

[1] And cp. the power of the Master to order inquisitions in the case of applications under sec. 116 (*post*), in virtue of the Lunacy Rules 1893, r. 1, *post*.

[2] *Ex parte Read*, 1654, 1 Atk. 168, 2 Inst. 405; *ex parte Harvey*, 1733, 3 Atk. 168; *ex parte Cranmer*, 1806, 12 Ves. 445; *re Bruges*, 1836, 1 My. & Cr. 278.

[3] *Ex parte Ashton*, 1744, 3 Atk. 169; *ex parte Barnsley*, 1744, 3 Atk. 168.

[4] *Ex parte Halse*, 1743, 2 Ves. sen. 403.

[5] *Wall's case*, 3 Atk. 173, *semble* cited as *Waller's case* (8 Geo. II.) in *ex parte Atkinson*, 1821, Jac. 334 n. (*a*). In this case there were apparently two returns, one as stated in the text, the other "worn out with age and incapable of the government of herself her messuages," etc., and a grant was made on the latter by Lord Talbot, L.C. But Lord Hardwicke, L.C., doubted the correctness of the decision in *ex parte Barnsley*, *ubi sup.* 173.

[6] *Ex parte Atkinson*, *ubi sup.*

[7] Cp. *Sherwood* v. *Sanderson*, 1815, 19 Ves., at p. 286; S.C., Coop. C. C. 108.

[8] *Ex parte Cranmer*, *ubi sup.* As to verdicts held sufficient, see *Sherwood* v. *Sanderson*, *ubi sup.*; *ex parte Pauncefort*, 1725, 3 Atk. 170.

[9] *Ex parte Freak*, 1732, 3 Atk. 168.

[10] *Re Holmes*, 1827, 4 Russ. 182.

[11] As to exceptional course taken by Lord Eldon, L.C., in one case, see *Ridgeway* v. *Darwin*, 8 Ves. 65. In one case, *Lord Wenman's*, cit. at 2 Ves. sen. 408, three commissions were issued before the party was found *non compos*.

melius inquirendum,[1] is issued[2] and this *may* be done without a fresh petition being ordered. In *ex parte Atkinson*[1] Lord Eldon allowed a short petition to be presented against the issuing of the commission. The petition was presented, affidavits were filed on both sides, and his lordship after reading them made the order for the new commission. Sec. 93

93. Where the Judge in Lunacy does not in his order for inquisition direct the return of a jury, but the Masters, upon consideration of the evidence, certify that in their opinion an inquisition before a jury is expedient, they shall, without further order, issue their precept to the sheriff, and shall proceed in like manner in all respects, and their proceedings shall be as valid and effectual as if the Judge had directed the return of a jury in the first instance. Jury to be had, if Masters certify that it is expedient.

This section re-enacts sec. 43 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

The Judge in Lunacy.—See sec. 108, *post*, and notes thereon.

Order for inquisition.—See notes to sec. 90, subs. (1), *ante*.

A jury.—There is an inquisition with a jury (1) where the alleged lunatic is out of the jurisdiction (sec. 96, *post*); (2) where the alleged lunatic is within the jurisdiction and demands a jury, (sec. 90, subs. (2), *ante*), unless the Judge in Lunacy dispenses with it (sec. 92, *ante*); (3) where the Master certifies for a jury under this section; and (4) where the Judge in Lunacy directs it, although the alleged lunatic, being within the jurisdiction, has not demanded it.[3]

As to procedure on the inquisition, see notes to sec. 92, *ante*.

As to number and composition of jury, see sec. 97, *post*.

The Masters.—Definition of, sec. 341, *post*.

Powers, etc., of, sec. 111 *et seq.*, and notes thereon, *post*.

The inquisition is held before a single Master, see *ante* p. 284, note 1, and Rules in Lunacy, 1892, r. 15, *post*.

Upon consideration of the evidence.—It is apparently necessary that the Masters should go through the whole of the evidence before

[1] Unless at the suit of the Crown. The authorities are divided on the point. Cp. in favour of the *melius inquirendum*, 8 Rep. 168 (*b*); *ex parte Roberts*, 1743, 3 Atk., at p. 6; *Knight* v. *Duplessis*, 1754, 2 Ves. sen. 555, 4 Madd. 313; *aliter ex parte Atkinson*, 1821, Jac. 333, where, however, there is no reference to the Crown.

[2] *Halse's* case, 1743, 2 Ves. sen. 403; *ex parte Cranmer*, 1806, 12 Ves. per Lord Erskine, L.C., at p. 405; *ex parte Atkinson*, *ubi sup.*; *re Holmes*, 1827, 4 Russ. 182; *re Bennet*, 1837, 1 Jur. 469.

[3] This power is implied in the clause in sec. 92, *sup.*, *it appears to the judge . . . unnecessary or inexpedient, etc.* It is, however, rarely exercised. See an amusing discussion between Lord Westbury and Lord Derby on this point in Hansard, 3rd ser. vol. 165, p. 1406.

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summoning a jury under this section. Such at least was the opinion expressed by Master Barlow (who stated that he had taken the best advice on the subject) before the Select Committee of 1859 in regard to the corresponding words in sec. 43 of the Lunacy Regulation Act 1853, "upon consideration of the evidence before them."[1]

The procedure under this section is peculiarly open to the objection that it involves a double trial. But it is rarely resorted to in practice, and there may be cases in which its employment would be convenient.[2]

Precept.—As to the Master's precept, see *ante* p. 284.

Form of precept, *post* Appx.

Shall proceed . . . instance.—See notes to sec. 92, *ante.*

Inquiries before a jury may be made by means of an issue in the High Court.

94. (1) Wherever the Judge in Lunacy orders an inquisition before a jury, he may by his order direct an issue to be tried in the High Court, and the question in such issue shall be, whether the alleged lunatic is of unsound mind and incapable of managing himself or his affairs; and the provisions of this Act with respect to commissions of lunacy, and orders for inquisition to be tried by a jury, and the trial thereof, and the constitution of the jury, shall apply to any issue to be directed as aforesaid, and the trial thereof, and subject thereto and to the provisions of this Act such issue and the trial thereof shall be regulated by the Rules of the Supreme Court for the time being in force relating to the trial of issues of fact by a jury, and the verdict upon any such issue finding the alleged lunatic to be of unsound mind and incapable of managing himself or his affairs shall have the same effect as an inquisition under this Act.

This subsection re-enacts subs. (4) of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86). That Act was passed after, and largely in

[1] Report of 1859, Ans. 993-98. It is stated in the index to this report (tit. "Chancery Lunatics," I. *Jurisdiction, etc.*) that the Lords Justices concurred in Master Barlow's opinion. Presumably, therefore, it was their advice that he had obtained.

[2] The only case known in the Lunacy Office where it was adopted was *re Joseph Brice* in 1855. A case is given by Master Barlow (*ubi sup.* Ans. 993) where a hint by him, that the parties might not be able to get his decision with regard to a lunatic, who though in an asylum was still subject to criminal proceedings, without his first going through the *whole* of the evidence, and then summoning a jury, led to the proceedings being dropped.

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Origin of section.

consequence of, the *Windham case*.[1] Between the passing of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70) and that case there had been issued 560 commissions in lunacy, but of these 19 only had been tried by jury, and none of these had occupied any length of time.[2] The inquiry in the case of Mr. W. F. Windham, however, which was held before Master Warren and a jury in the Court of Exchequer, occupied the better part of 34 days; it was roughly computed at the time to have cost £60,000; 48 witnesses were examined for the petitioners, and 91 for the alleged lunatic; the evidence ranged over the whole life of the alleged lunatic; much of the medical testimony adduced was of a highly speculative character; and the details of the ordinary evidence were extremely painful and disgusting. Public feeling was very strongly aroused by this *cause célèbre*, and the Master was severely, though it was afterwards admitted unjustly, criticised for having allowed the inquiry to be protracted for so long a period of time. Even after it was acknowledged that the strictures on Master Warren had been unjust, fresh legislation on the subject of inquisitions was perceived to be necessary. For the *Windham case*[1] showed how unsettled the law was on many points. Thus doubts were raised as to whether an inquisition was a Crown prerogative proceeding merely or a litigation between parties, as to whether the Master had any right to conduct the examination of the alleged lunatic in private, and as to the number and position of jurymen. And in addition to these technical points there were grave general questions. Although the *Windham case*[1] was far more scandalous in point of costliness than any of its predecessors, other flagrant instances of undue expense in such inquiries were not wanting.[3] The unlimited range which the inquiry might assume,[4] and the abuses of the right to traverse[5] were open to serious objection, and it was very generally felt that provision should be made for inquisition with a jury being held, if necessary, before a stronger tribunal than that of the Master.

Windham case.

Doubts raised by *Windham case.*

It was in consequence of the facts just stated that the Lord Chancellor of the day (Lord Westbury) brought forward the Bill which ultimately became law as the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86). We shall refer to the history and provisions of this Act, so far as is necessary, in the notes.

Lunacy Regulation Act 1862.

Judge in Lunacy.—See sec. 108, *post.*

Orders.—See notes to sec. 90, subs. (1), *ante.*

An inquisition before a jury.—As to when an inquisition before a jury is ordered, see notes to sec. 93, *sup.*

He may by his order.—Lord Westbury proposed originally the compulsory reference to the superior Courts of *all* inquisitions which were to be held before a jury. This provision was afterwards, however, abandoned, and the reference was made permissive only, on the

Reference to superior Courts.

[1] 1862, 31 L.J., N.S., Ch. 720.

[2] 11 took 1 day; 3 took 2 days; 1 took 3 days; 3 took 5 days; 1 took 9 days.

[3] See notes to sec. 94, subs. (2), *post.*

[4] See notes to sec. 98, subs. (1), *post.*

[5] See notes to sec. 101, subs. (1), *post.*

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lines of a corresponding clause in a Bill introduced into the House of Commons by Lord, then Sir Hugh, Cairns in 1859.

An issue.—See notes "to the question," etc., *inf.*

The High Court, i.e. the High Court of Justice in England or Ireland, as the case may be (Interpretation Act 1889, 52 & 53 Vict. c. 63, sec. 13 (1).)

Inquiry before Lords Justices suggested.

During the discussion of the Lunacy Regulation Bill in the House of Lords, Lord Chelmsford suggested that the inquiry should be before the Lords Justices, on the ground of the difficulty of securing the regular attendance of the puisne judges, in the midst of all their other business, for the conduct of such inquiries. But Lord Westbury refused to adopt this suggestion, because the impartiality of the Lords Justices might be, or might be suspected of being, affected by their having dealt with cases already on applications for a commission.

Issue.

The question . . . affairs.—Lord Westbury proposed to make *imbecility of mind* part of the issue. (As to the development of the law on this subject, see notes to sec. 92, subs. (1), *ante.*) But the provision as to imbecility of mind was abandoned. As to use of "or," see p. 270, note 8.

Act of 1891, s. 26, subs. (1). Amendments in procedure upon inquisitions.

26. (1) The provisions of section ninety-four, subsection two, of the principal Act as to the trial of issues in the High Court shall extend to all inquisitions, and the Masters may, for the purpose of inquisitions held before them, exercise the powers by that subsection conferred upon the Judge who tries the issue.

Origin of subsection. *re B.*

Subs. (1) of sec. 26 of the Act of 1891 was passed in consequence of the proceedings in *re B.*[1] There a petition in lunacy had been presented by a husband for an inquiry into his wife's state of mind. The lady was examined personally by the Master, and before the close of the petitioner's case an application was made on his behalf to Lopes, L.J., as Judge in Lunacy, for a compulsory order that the respondent should submit to an examination by two medical men appointed by him. Lopes, L.J., doubted whether there was jurisdiction to make the order, and adjourned the application into Court. It was held that there was jurisdiction both for the Master and for the Court, if necessary, to make the order, but the Court doubted whether the Master could enforce the order in cases where there was no jury. Sec. 99 of the Act of 1890, *post*, conferred on the Master the powers of a Judge of the High Court where the inquisition was with a jury, and therefore by implication the power to commit for disobedience to an order. But it was suggested that in other cases an application might have to be made to the Judge in Lunacy for an order to enforce the Master's summons.[2]

[1] 1891, 3 Ch. 274; and see this case reported in its subsequent stages in 1892, 1 Ch. 459, and 1892, 3 Ch. 194.

[2] As in *re Holmes*, 13th Dec. 1827, Shelf. Lun. 874-5, and 127 n. (*g*).

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The Act of 1891 supplied this hiatus in the Act of 1890, by its 26th section, and by repealing in its schedule (*post* Appx.) the words "with a jury," in sec. 99, *post*.[1]

The provisions . . . High Court.—See notes to sec. 95, subs. (2), *post*.

All inquisitions, i.e. whether with or without a jury. See general note at commencement of notes to this subsection, *sup*. See definition of "inquisition," sec. 341, *post*.

Masters.—Definition of, sec. 341, *post*.

As to appointment and powers of, see sec. 111, *post, et seq*.

Inquisition held before them.—All inquisitions are held before a Master, except those directed under sec. 94, subs. (1), *ante*, to be tried in the High Court.

The powers, i.e. the powers of a Judge of the High Court trying an issue of fact under the Rules of the Supreme Court, 1883. See Order xxxvi.

Act of 1891, s. 26, subs. (2).

(2) The Masters may make orders for the attendance of an alleged lunatic at such time and place as the order directs, for examination by the Masters or a medical practitioner, and such order may be enforced in the same way as an order of a Judge of the High Court.

The Masters.—See notes to preceding subsection, *sup*.

Orders . . . directs.—See form of order in *re B.*[2]

Lunatic.—Definition of, sec. 341, *post*.

Orders for attendance of lunatic.

Such order may be enforced, etc., i.e. by writ of attachment. Such writs may be issued by the Master,[3] but as a matter of convenience and discretion it is desirable that the Master should, unless in exceptional cases, refer such applications to the Court, in order that a matter involving the liberty of the subject may be dealt with judicially in open court,[4] according to the practice with regard to applications for attachment in the High Court of Justice.[5] The Court is the Court in Lunacy, and not a Divisional Court.[4]

Examination.—As to examination of alleged lunatic prior to issuing order for inquisition, see notes to sec. 90, subs. (1), *ante*.

[1] In *re B.*, 1892, 1 Ch., at p. 463, Kay, L.J., doubted whether the object would have been effected without the repeal of these words by the schedule, and Lindley, L.J., and Lopes, L.J., without expressing an opinion on this point, speak of the power to issue a writ of attachment as being conferred by sec. 26 of the Act of 1891, combined with sec. 99 of the Act of 1890, as modified by the schedule to the Act of 1891.

[2] 1892, 1 Ch., at p. 460.

[3] This power is conferred by the combined effect of this section and sec. 99 of the Act of 1890, *post*, as amended by the schedule to the Act of 1891, *post* Appx.

[4] Per Lindley, L.J., in *re B.*, *ubi sup.*, at p. 462. See substance of order for attachment (S.C., at pp. 462 and 464, and *post* Appx.), where the order was directed to lie in the Office for a fortnight, as the Court was in some doubt whether the alleged lunatic was within the jurisdiction. The alleged lunatic was, in fact, out of the jurisdiction, but she returned to England, saw one of the Lords Justices, and consented to see a medical expert approved by herself and him (*ib.*, at p. 464).

[5] Cp. *Davis* v. *Galmoye*, 1888, 39 Ch.D. 322.

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As to examination by Masters or jury, see notes to sec. 92, *ante*.

Order for attendance of lunatic, independent of Acts, by Judge. Power of Master.

The Judge in Lunacy had, independently of the Acts of 1890 and 1891, power to order an alleged lunatic to come before him and submit to be examined by medical men appointed by him for the purpose.[1]

The Master in Lunacy had also the same power by necessary implication under sec. 92, *ante*, of the Act of 1890, where there was no jury, and independently of the statute where there was one.[1] The present subsection, however, gives express power.

Order to be made with caution,

An order on an alleged lunatic under this subsection ought not to be made against his will except with great caution and real necessity; and whilst there is no doubt that such an order can be made by the Master, and if necessary by the Court in Lunacy, no such order ought to be made by the Court adversely to a person pending an inquiry into his state of mind, unless the Master or other person conducting the inquiry certifies to the Court, or otherwise informs it, that its order is necessary to enable him to come to a decision upon the subject.[2]

and not simply on ground of interest or benefit of lunatic.

Such orders ought not to be made simply on the ground that the applicant has an interest in the matter, and that the order would benefit him.[3] In *ex parte Lyttelton*,[4] for instance, Lord Eldon, L.C., refused to make an order for the examination of an alleged lunatic—a lady; the object of the applicant being to obtain evidence that she was incapable of exercising a power, and there being reason to fear that such visit might be attended with dangerous consequences by irritating her.

Masters.—See notes to sec. 94, subs. (2), *sup.*

"Medical practitioner."

Medical practitioner.—Definition of, sec. 341.

The subsection does not say or seem to contemplate that the examination must be by a doctor necessarily occupying the position of an officer of the Court, or by one bound to report to the Court. If he were an officer of the Court he would of course be bound to report to the Court, and his statement would not be disclosed to either side without leave.[5] If, however, the medical practitioner

Inspection of reports of.

[1] *Re B.*, 1891, 3 Ch., at p. 276. And cp. the orders in *re Bagster*, 1832, Shelf. Lun. 657 n. (*v*), 658 n. (*x*); *re Fletcher*, 1832, *ib.* 126; and *re Holmes*, 1827, Shelf. Lun. 875 (*a*) where the Lord Chancellor made an order to enforce a Master's summons; *Anderdon* v. *Burrows*, 1830, 4 C. & P., per Lord Tenterden, C.J., at p. 214; *re Anon.*, 1881, 18 Ch. D. 26, where the order was made before the inquisition was directed.

[2] *Re B.*, 1891, 3 Ch. 277. The appeal was in this case refused, on the ground that the Master had not certified that there was any real necessity for the compulsory order to be made. After the Act of 1891 was passed, the Master himself made the order under sec. 26, subs. (2). In *re Gilbert Scott*, cited 1891, 3 Ch., at p. 277, *re Anon.*, *ubi sup.*, and *re Bariatinski*, 1843, 1 Ph. 375, the order was not made in opposition to the wishes of the alleged lunatic, for the opposition was only to the medical witnesses of the petitioner seeing the alleged lunatic in the absence of her medical witnesses. Leave was however granted to see her alone.

[3] *Re B.*, 1891, 3 Ch. 277.

[4] 1801, 6 Ves. 7.

[5] *Re B.*, 1892, 3 Ch., per Bowen, L.J., at p. 197, and per Kay, L.J., at p. 200. But query whether such leave would be given under any circumstances. See per Lindley, L.J., *ubi sup.*, at p. 196; and *re H. W. Strachan*, 1895, 1 Ch., per Lindley, L.J., at p. 444.

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makes his examination—merely by the permission of the Court—for the purpose of giving evidence, there is nothing in this subsection to compel him to make any report at all, or to show that if he does so the other side is to be entitled to see it. Such a report is in the position of a witness's proof; the witness himself must be called at the trial if any use is to be made of his evidence; the advisers of the alleged lunatic will have the opportunity of hearing what he says on oath, and production of his report may then be ordered, if the Master in his discretion deems it advisable.[1]

As to protection of persons making report, see sec. 330, *post.*

Wilful misstatement of material fact in, is a misdemeanour, sec. 317, subs. (2), *post.*

Only one inquisition ordered under this section.

So far, only one inquisition—*re Scott*,[2]—has been ordered under the jurisdiction created by sec. 4 of the Act of 1862, and continued by this section—a fact which shows that the Masters' Court was better fitted for the trial even of complicated inquiries than was supposed at the time of the *Windham case*.[3]

See form of order directing trial of issue in the High Court in *re Scott*.[4] It will be observed that in that case an order had *previously* been made for an inquiry before a Master and a jury.

The provisions of this Act . . . commissions of lunacy.—See secs. 112, 113, 334, *post.*

Orders for inquisition.—See sec. 90, *ante.*

The trial thereof.—See sec. 92, *ante.*

The constitution of the jury.—See sec. 92, *ante*, and sec. 97, *post.*

Proceedings under this section.

Subject thereto . . . jury.—When an issue is directed by an order in lunacy under section 94, it is not necessary to commence the proceedings by a writ of summons, the order for the issue being sufficient to give jurisdiction to the Judge. This clause refers not to the machinery for arriving at the issue, but to the trial of the issue where it has been ordered.[5]

As to the Rules of the Supreme Court, see R.S.C. 1883, Order xxxvi. Under the Act of 1862 the trial was governed by the provisions of the Gaming Act 1845 (8 & 9 Vict. c. 109).

Verdict.

The verdict . . . Act.—It is conceived that the verdict must be consistent with the issue, see notes to sec. 92, *ante*, except in the case mentioned in sec. 98, subs. (2), *post.* There cannot be a traverse, but there may be a new trial, of an issue under this section, see sec. 103, *post.*

(Examination of alleged lunatic.)

(2) On the trial of every such issue the alleged lunatic shall, if he is within the jurisdiction, be examined before the evidence is taken, and at the close

[1] *Re B.*, 1892, 3 Ch., per Lindley, L.J., at p. 196; per Kay, L.J., at pp. 199, 200.

[2] 1884, 27 Ch.D. 116.

[3] 1862, 31 L.J., N.S., Ch. 720.

[4] *Ubi sup.*, at p. 116, and Appx.

[5] *Re Scott, ubi sup.*, a case decided under sec. 4 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86).

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of the proceedings, before the jury consult as to their verdict, unless the Judge who tries the issue otherwise directs; and such examinations shall take place either in open court or in private as such Judge directs.

This subsection re-enacts sec. 6 of the Lunacy Regulation Act 1862.

The trial of every such issue.—See notes to preceding subsection. The subsection applies now to all inquisitions, *v. sup.* sec. 26, subs. (1) of the Act of 1891.

Lunatic.—Definition of "lunatic," sec. 341, *post.*

Examined before.—Prior to the passing of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86), the examination of the alleged lunatic was taken at the close of the evidence. The defect of this procedure was that it sometimes prolonged proceedings which could have been terminated at once if the alleged lunatic had been examined before the evidence was taken. In *Mrs. Cumming's case*,[1] for instance, a sum of £2500 was spent in establishing the lunacy of a person whose unsoundness of mind was apparent the moment she was examined by the jury.

The evidence.—As to the evidence, see notes to sec. 92, *ante.*

At the close.—See notes to "examined before." The object of the second examination is to enable the jury to examine the alleged lunatic in the light of the evidence given on both sides.

Judge may dispense with preliminary examination.

Unless the Judge.—The alleged lunatic has a right to be examined at some stage in the proceedings, see *ante* p. 287, and the Judge has no power under this clause to deprive him of it. The Judge can, however, dispense with the preliminary examination if, *e.g.*, he think it desirable that the jury should hear the evidence before seeing the alleged lunatic; and with the subsequent examination if, *e.g.*, the jury are satisfied of the lunacy by the preliminary one.

Examination in private or otherwise.

Windham case.

Such examinations . . . directs.—Master Warren's determination to examine Mr. Windham in private[2] gave rise to some adverse criticism, and was only submitted to by Mr. Windham under protest.[3] Sir Hugh Cairns—Mr. Windham's leading counsel—contended that the Master's decision on this point was (1) inconvenient, inasmuch as statements prejudicial to Mr. Windham had been made publicly and he was therefore entitled to rebut them as publicly; and (2) without jurisdiction, since private examinations had never been ordered except, as in the *Portsmouth case*,[4] by the act, or with the express or implied consent of parties, or when an examination in open Court

[1] Cp. Hansard, 3rd ser. vol. 165, at p. 781; and *Elliott* v. *Ince, re Cumming*, 1857, 7 De G.M. & G., 475.

[2] Counsel and a shorthand writer were admitted to the examination. The Master held that he and the jury were also entitled, if necessary, to examine Mr. Windham a second time alone.

[3] *Solicitors' Journal*, 1861-2, p. 209.

[4] By Lord Eldon, L.C., *Sol. Jour.*, *ubi sup.*

was physically impossible. He further urged that the analogy of the Divorce Court was in favour of his contention. Master Warren adhered, however, to his decision. It was clearly expedient that there should be power to direct a private examination, and sec. 6 of the Lunatic Regulation Act 1862—which this subsection re-enacts—put an end to all doubt on the question.

Certificate of Masters without a jury to have the force and effect of an inquisition.

95. Where the Masters certify that the alleged lunatic is of unsound mind, and incapable of managing himself or his affairs, or that he is of sound mind, and capable of managing his affairs, the certificate shall have the same effect as an inquisition taken upon the oath of a jury.

This section re-enacts sec. 44 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

The Masters.—Definition of, sec. 341, *post.*

Appointment and powers of, sec. 111, *post, et seq.*

Certify.—See notes to sec. 92, *ante.*

Lunatic.—Definition of, sec. 341, *post.*

Unsound mind . . . affairs.—See notes to sec. 92, *ante.* As to alternative finding, see sec. 98, subs. (2), *post.*

Inquisition.—Definition of, sec. 341, *post.*

See notes to sec. 92, *ante.*

A jury.—See notes to sec. 92, *ante.*

Jury to be had if lunatic out of jurisdiction.

96. Where the alleged lunatic is not within the jurisdiction it shall not be necessary to give him notice of the application for inquisition, and the inquisition shall be before a jury.

This section re-enacts sec. 45 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Lunatic.—Definition of "lunatic," sec. 341, *post.*

Not within the jurisdiction.—As to where the alleged lunatic is within the jurisdiction, see sec. 90, subs. 1, *ante.* As to extent of jurisdiction in regard to property, sec. 110, *post.*

Notice of the application.—As to the application, see sec. 90, subs. (1), *ante.* As to notice, see sec. 90, subs. (2), *ante.*

Although it is not necessary to give notice, the Judge or Master may order it to be given, Rules in Lunacy, 1892, r. 24, *post.*

The inquisition . . . jury.—Definition of "inquisition," sec. 341, *post.*

As to procedure, see notes to sec. 92, *ante.*

Secs. 97, 98 (1).

As to number and composition of jury, see sec. 97, *inf.*

As to other cases in which inquisition is tried by jury, see notes to sec. 92, *ante.*

Number of jury.

97. The Lord Chancellor may, by order, regulate the number of jurors to be sworn, but so that every inquisition upon the oath of a jury be found by the oaths of twelve men, at least.

This section re-enacts sec. 46 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Scope of section.

The Lord Chancellor.—See definition of in sec. 12 of the Interpretation Act 1889 (52 & 53 Vict. c. 63), cited *ante* p. 198.

Order.—This section does not alter the law as to juries on inquisitions. It merely authorises the making of a general order to fix the number of jurors, with a view to diminish expense, subject to the restriction that there shall not be fewer than twelve. No such order has been made.

The number of jurors.

The number of jurors . . . at least.—Under 1 Henry VIII. c. 8, an inquisition cannot be returned unless it is found by the oaths of twelve men, and the practice has been to swear a jury of from twelve to twenty-four. In the Master's precept the sheriff is now in practice required to summon thirty-four jurors. It was contended in the *Windham case*,[1] on behalf of the alleged lunatic (cp. *Solicitors' Journal*, 1862, vol. vi., at p. 174), where a jury of twenty-three was summoned, and during the inquiry one of the jurors took ill and was medically certified to be unable to attend, that the inquiry could not proceed in his absence. But Master Warren overruled the objection, and went on with the remaining twenty-two, stating that he could if he pleased have gone on with twelve jurors only. It is clear that this decision, although it was sharply criticised at the time, was right. In *ex parte Wragg*[2] an inquisition was taken with only seventeen jurors, of whom five refused to concur in the verdict, and no objection was raised to the regularity of this proceeding, although the finding was challenged on other grounds; and in the *Windham case* itself[1] only fifteen jurymen concurred in the verdict.

As to concurrence in verdict.

As to the summoning of the jury, see notes to sec. 92, *ante.*

Nature and limit of inquisitions.

98. (1) The inquisition shall be confined to the question whether or not the alleged lunatic is at the time of the inquisition of unsound mind, and incapable of managing himself or his affairs, and no evidence as to anything done or said by him, or as to his demeanour or state of mind

[1] 1862, 31 L.J., N.S., Ch., at p. 723. [2] 1800, 5 Ves. 450.

at any time, being more than two years before the time of the inquisition, shall be receivable in proof of insanity, or on the trial of any traverse of an inquisition, unless the person executing the inquisition otherwise directs. Sec. 98 (1).

This subsection consolidates and re-enacts the first part of sec. 47 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), and sec. 3 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86), by which the scope of inquisitions was first limited in the manner indicated in this subsection.

The inquisition.—Definition of, sec. 341, *post.*

Procedure on, see notes to sec. 92, *ante.*

Confined . . . affairs.—Prior to the enactment of sec. 47 of the Lunacy Regulation Act 1853, commissions in lunacy directed an inquiry as to how long the unsoundness of mind, if it existed, had lasted. The result was that the whole life of the alleged lunatic was liable to be inquired into. Sec. 47 of the Act of 1853, however, provided that the inquiry was not to be carried back, unless the Lord Chancellor otherwise directed. The discretion to carry back the inquiry was thus left intact,[1] and the *Windham case*[2] offered a peculiarly flagrant instance of the abuses to which its exercise might lead. Sec. 3 of the Lunacy Regulation Act 1862 was passed in order to prevent such scandals for the future. The Bill as originally introduced into the House of Lords by Lord Westbury provided—(1) that the opinion or conclusion of a medical practitioner as to the existence of unsoundness of mind should not be receivable in evidence unless the Judge or Master executing the commission should otherwise direct (sec. 3); and (2) that an inquisition whereby a person was found incompetent to manage his affairs from unsoundness or imbecility of mind should have the same force as an inquisition finding a person lunatic (sec. 5). But both of these provisions—which were the product of public excitement over the course and the result of the *Windham case*[2]—were abandoned before the Bill became law. The former was very strongly resented by the medical profession, and Sir Hugh Cairns pointed out in the debates on the Bill in Committee, that it in effect prescribed that the only persons whose opinion as to the existence of unsoundness of mind was not to be asked were the persons who alone were capable of giving a sensible opinion on the subject. The latter, however, is now practically embodied in subs. (2) of this section, *inf.*, which re-enacts the first clause of sec. 48 of the Lunacy Act 1889. As to words "or his affairs," see p. 270, note 8.

Scope of inquisition prior to 1853.

Under Act of 1853.

Under Lunacy Regulation Act 1862.

No evidence . . . otherwise directs.—The present subsection relates

Evidence.

[1] This discretion is taken away by sec. 3 of the Lunacy Regulation Act 1862, *re Danby*, 1885, 30 Ch.D. 320, dissenting from the opinion of James, L.J., in *re Sottomaior*, 1874, 9 Ch., at p. 680, and cp. *re Stamper*, 1877, cited 9 Ch., at p. 320 n. (2).

[2] 1862, 31 L.J., N.S., Ch. 720.

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to two different things: first the inquiry to be directed, and secondly the evidence upon the inquiry. The first part of the subsection says in plain terms that the inquiry is to be confined to the question whether the alleged lunatic is of unsound mind at the date when it is held, and the discretion which the Lord Chancellor possesses under sec. 47 of the Lunacy Regulation Act 1853 of ordering the inquiry to be carried further back, no longer exists. The second part of the subsection deals only with the evidence to be adduced. It lays down a rule that *primâ facie* no evidence more than two years old is to be receivable, but gives a discretion to relax this rule to the person conducting the inquiry.[1]

Application of section to traverse.

A traverse.—As to applications for, and procedure on, traverses, see notes to sec. 101, *post*. The issue on a traverse is whether or not the person found lunatic was of unsound mind at the time of the inquisition. It is clear that under this subsection no evidence more than two years prior to the date of the inquisition is *primâ facie* receivable. But a difficulty arises as to whether this rule can, as in the case of an inquisition, be relaxed on the trial of a traverse. It is only "the person executing the inquisition" who is expressly authorised to relax it. Construed in its literal and grammatical sense, the subsection would enable the person executing the inquisition to direct evidence more than two years old to be admitted at the trial of the traverse. But this construction cannot be correct; and it is conceived that the reception of evidence older than the statutory prescription cannot be allowed in traverses. If there is, as is here suggested, a hiatus in the Act in regard to this point, it ought to be supplied. As inquisitions are generally held before a Master, while traverses are held by a Judge of the High Court, it is rather anomalous that the former should have a discretion which is denied to the latter; and, moreover, as the object of a traverse is to impugn the result of an inquisition, it appears to be somewhat illogical and unfair that the Judge trying a traverse should not be able—if he came, for instance, to the conclusion that the Master improperly declined to admit evidence beyond the statutory limit—to rectify the error in the proceedings before himself.

(Specially certified. Act of 1889, sec. 48.)

(2) If upon such inquisition it appears that the alleged lunatic is of unsound mind, so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, it may be so specially found and certified.

This subsection re-enacts the first clause of sec. 48 of the Lunacy Act 1889. In the Lunacy Regulation Bill, as originally introduced into the House of Lords by Lord Westbury in 1862, it was provided

[1] *Re Danby*, 1885, 30 Ch.D. 320, following *re Stamper*, 1877, cited *ib.*, and dissenting from the opinion of James, L.J., in *re Sottomaior*, 1874, 9 Ch., at p. 680

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Origin of provision.

that an inquisition whereby a person was incompetent to manage his affairs from unsoundness or imbecility of mind should have the same force as an inquisition finding him lunatic (sec. 5), but this provision was abandoned before the Bill became law. The present subsection enacts it in substance in so far as *unsoundness of mind* is concerned, and provides for commitment of the estate without a commitment of the person.

Applications under sec. 116.

Under the joint effect of the provisions of sec. 116, subs. (1) (*d*), *post*, and the Rules in Lunacy, 1893, r. 1, *post*, the Masters may, upon any application under sec. 116, order a petition for an inquisition to be presented in the case of persons who are, through mental infirmity arising from disease or age, incapable of managing their affairs. Sec. 116 of the Act of 1890 also realises another object which Lord Westbury unsuccessfully endeavoured to attain in the Lunacy Regulation Bill, by enabling the Judge in Lunacy to provide for the management and administration of the property of persons of this class without issuing a commission.

It would seem that imbecility and loss of mental power, whether arising from mental decay or from paralysis, softening of the brain, and although unaccompanied by frenzy or delusion of any kind, if it rendered a person incapable of managing himself or his affairs, would justify a verdict of unsoundness of mind on an inquisition, independently of the provisions of this statute.[1]

Such inquisition.—See notes to subs. (1), *sup.*

Lunatic.—Definition of "lunatic," sec. 341, *post*, and see general note to this subsection, *sup.*

Unsound mind.—See general note to this subsection, *sup.*, and "himself," also, *ante.*

Not dangerous, etc.—As to the apprehension of dangerous lunatics, see Criminal Lunatics Act 1838 (1 & 2 Vict. c. 14), *post.*

Specially found and certified.—As to the powers of the Judge in Lunacy in such cases, see sec. 108, subs. (3), *post.*

In other cases the verdict and the issue must correspond, otherwise the inquisition is liable to be quashed. See *ante*, p. 289.

Power of person executing inquiry.

99. The person executing an inquisition *with a jury* shall, while so employed, have all the powers, authorities, and discretion of a Judge of the High Court.

Words *with a jury* why repealed.

This section re-enacts sec. 48 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70). The words *with a jury* were repealed by the schedule to the Lunacy Act 1891, in consequence of the doubt raised in *re B.*[2] whether the Master could enforce a writ of attachment against an alleged lunatic who had failed to comply with an order to

[1] Cp. *Reg.* v. *Shaw*, 1868, L.R. 1 C.C.R. 145, a case decided under 8 & 9 Vict. c. 100, sec. 90.

[2] 1891, 3 Ch. 274 ; 1892, 1 Ch. 459.

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attend for medical examination. See this subject discussed in the notes to sec. 26, subs. (1) of the Act of 1891, *ante* p. 295.

The person executing an inquisition.—Inquisitions are in practice executed by the Master in all cases except where issues are directed to the High Court under sec. 94, *ante*.

With a jury.—As to the repeal of these words, see general note to this section, *sup.*

As to inquisitions with a jury (*a*) before a Master, see sec. 92, *ante*, and notes thereon; (*b*) in the High Court, see sec. 94, *ante*, and notes thereon.

All the powers, etc.—See general note to this section. It is submitted that a special verdict differing from the issue cannot be found in any case other than that provided for by sec. 98, subs. (2), *sup.*

In the *Windham case*[1] Master Warren intimated an opinion—in consequence of the freedom with which the proceedings were being commented upon in the press—that under the 48th section of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), which this section in substance re-enacts, he could, if he thought it necessary in the interests of justice, prohibit the publication of the evidence from day to day. Although the power of Courts of law to prevent the publication of their proceedings pending litigation has been repeatedly affirmed,[2] it is now scarcely exercised, and fair, accurate, and *bonâ-fide* reports of cases in any public Court of Justice, a category to which the Masters' Court belongs, are privileged,[3] unless the evidence is obviously unfit for publication.[4] But comments on lunacy proceedings which are still *sub judice* may be punished as contempt,[5] and this section gives the Master, *while employed in executing an inquisition*, power to commit. Contemptuous or insulting conduct towards a Master acting ministerially or otherwise than *in Court* should, *semble*, be dealt with by reference to the Judge in Lunacy,[6] although a Master would presumably have power in a case of insult or disturbance to suspend his sitting or cause the ejection of the offenders.[7]

Query whether publication of evidence could be prevented.

Comments punishable as contempt.

Inquisition may be ordered on report of Commissioners.

100. Where the Commissioners report to the Lord Chancellor that they are of opinion that the property of any person detained or taken charge of as a lunatic, but not so found by inquisition, is not duly protected, or that the income thereof is not duly applied for his benefit, or to

[1] *Sols. Jour.* vol. vi. p. 174.

[2] Cp. *Brook* v. *Evans*, 1860, 29 L.J. Ch. 616, per Turner, L.J.; and *R.* v. *Clement*, 1837, 4 B and Ald. 218.

[3] Cp. *Lewis* v. *Levy*, 1858, 27 L.J. Q.B. 282; and as regards newspapers, see 51 & 52 Vict. c. 64.

[4] Cp. *re Evening News*, 1886, 3 Times L.R. 255.

[5] *Ex parte Jones*, 1806, 13 Ves. 237.

[6] Cp. *ex parte Burrows*, 1803, 8 Ves. 534; *French* v. *French*, 1824, 1 Hog. 138; *re Clarke*, 1842, 11 L.J. Q.B. 75; *ex parte Wilton*, 1842, 1 Dowl., N.S., 805; *re Johnson*, 1887, 20 Q.B.D., per Lord Esher, M.R., at p. 73; and cp. *Kirby* v. *Webb*, 3 Times L.R. 763.

[7] Cp. *Oswald on Contempt*, p. 11.

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the same effect, the report shall be filed with the Masters, and shall be deemed to be an application for inquisition supported by evidence, and the alleged lunatic shall have notice of the report from such person as the Judge in Lunacy directs, and the case shall proceed and be conducted as nearly as may be in all respects as is hereinbefore directed upon an application for inquisition.

This section re-enacts sec. 54 of the Lunacy Regulation Act 1835 (16 & 17 Vict. c. 70).

The Commissioners.—Definition of, sec. 341, *post.*

Appointment and duties of, sec. 150, *post.*

Report.—An inquisition may also be ordered by a Master, on an application under sec. 116, *post.* See Rules in Lunacy, 1893, r. 1, *post.*

As to inquiries with regard to property of lunatics by or on representation of Commissioners, see sec. 50, *ante.*

The Lord Chancellor.—See definition of in sec. 12 of the Interpretation Act 1889 (52 & 53 Vict. c. 63), cited *ante* p. 198.

The property . . . effect.—As to the powers of the Judge in Lunacy in regard to the property of such person, see sec. 116, subs. (1), *post.* Sec. 27, subs. (1) of the Act of 1891, *post*, gives the same powers to the Masters, subject to the Rules in Lunacy; and cp. Rules in Lunacy, 1893, r. 1, *post.*

Definition of "property," see sec. 341, *post.*

Filed.—In the same way as an application for an inquisition, see *ante* p. 260. The report is then brought before the Judge in Lunacy, who makes the order for an inquisition, and gives directions as to the person by whom service on the alleged lunatic is to be effected.

Application for inquisition.—As to such applications, see sec. 90, subs. (1), *ante*, and notes.

Supported by evidence.—As to evidence in other cases, see sec. 90, subs. (1), *ante.*

Lunatic.—Definition of, see sec. 341, *post.*

Notice.—As to notice of applications, see sec. 90, subs. (2), *post.*

For form of notice of report, see Form 6, Rules in Lunacy, 1892, *post.*

The Judge in Lunacy.—As to the Judge in Lunacy, see sec. 108, subs. (1), *post.* As to the power of the Judge in Lunacy or the Masters to order service of notice on any person, see Rules in Lunacy, 1892, r. 24, *post.*

The case shall proceed . . . inquisition.—See notes to sec. 90, subs. (1), *ante.*

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Traverse and Supersedeas of an Inquisition.

Applications for traverse to be made within a limited time.

101. (1) Any person desiring to traverse an inquisition, not being a verdict upon an issue tried in the High Court, may, within three months next after the day of the return of the inquisition, apply for that purpose to the Judge in Lunacy.

This subsection re-enacts the first clause of sec. 148 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), as amended by sec. 7 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86). The effect of these sections, and the reason for the amendment of the former by the latter, are considered below.

Traverse by lunatic.

Any person.—(1) Any person found lunatic by inquisition—otherwise than upon an issue tried in the High Court[1]—has a right to traverse if the judge is satisfied that the application is really that of the party in whose behalf it is made, and that he is mentally competent to form and express the wish to do so.[2] This point was long considered doubtful, and as the Judges who took a view contrary to that just stated were of the highest distinction, it may be convenient to trace the history of the controversy on the subject at this point.

History of controversy as to right to traverse. Common law.

At common law, when the king became seised of any estate of freehold or inheritance by inquest of office, the party aggrieved could have no traverse of the inquest, but had to proceed by petition of right, or in some cases, including chattels real, and higher interests, by *monstrans de droit*—a procedure which in either case put him in the position of a plaintiff who had to make out his title affirmatively.[3]

Statute *de Praerogativâ Regis.*

This rule, of course, governed the case of inquisitions in lunacy, since by the statute *de Praerogativâ Regis* (17 Edw. II. cc. 9 & 10, *post* Appx.) embodying the principle of the common law, the Crown was entitled to the custody of the lands of a lunatic. In cases, however, where the lands were not in the king's hands a traverse was allowed, the effect of which was that the king was only entitled to a *scire facias* in the nature of that action to which a subject would have been entitled under similar circumstances, and in such cases the party being in the nature of a defendant might appear and traverse the office without showing any title in himself.[4] The remedy by petition, or *monstrans de droit*, having been found inconvenient, the statute 34 Edw. III. c. 14, provided that in certain cases the party aggrieved might traverse the

34 Edw. III. c. 14.

[1] As to the procedure open to the lunatic in such cases, see sec. 104, *post.*

[2] Cp. American cases, *re Christie*, 1835, 5 Paige 242; *re Giles*, 1844, 11 *ib.* 243; and as to protection of lunatic pending traverse, *re Mendell*, 1815, 1 Johns. Ch. 600; *re Russell*, 1845, 1 Barb. Ch. 42.

[3] 4 Rep. 54, 56 (*a*), Gilb. Exch. 172, and *R.* v. *Mason*, Trin., 1 Ann., 2 Salk. 447.

[4] 4 Rep. 54, *R.* v. *Roberts*, 17 Geo. II., 2 Str. 1208.

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inquest, after office found; and by the statute 36 Edw. III. c. 13, a general right was given to traverse inquests of office taken before escheators. This right was extended to commissions in lunacy by the statute 2 & 3 Edw. VI. c. 8, sec. 6, which enacted that if any person should be untruly found lunatic or idiot, every person aggrieved by such finding should have a right to traverse at his pleasure, and should have the like remedy and advantage as in other cases of traverse upon untrue inquisitions or offices found. *Primâ facie*, and apart from authority, this statute would appear to confer a right of traverse on the conditions which it indicates, viz. that there should be an untrue finding, and that the application should be made by a party aggrieved by it, in the clearest and strongest terms. But a contrary construction of the statute gradually came to be adopted from a variety of causes. In the first place, although there is a case on record—*re Gervase Heely*[1]—where a traverse was filed in the Petty Bag Office without the assent of the lunatic or the leave of the Court, and Lord Hardwicke left the traverse to be tried without interfering with it, liberty to traverse was generally applied for. The reasons why this course was taken are clearly pointed out by Lord St. Leonards in *re Cumming*.[2]

36 Edw. III. c. 13.

2 & 3 Edw. VI. c. 8.

Construed against right of traverse.

(*a*) Liberty generally applied for.

The traverse could not take place until the party had been found lunatic on a commission issued by the Great Seal, and therefore no one would, generally speaking, attempt to traverse except with the leave of the Great Seal, because otherwise he would have no security for the reimbursement of his costs of thus defending the interest of the lunatic. A person going behind the back of the Court and exercising his legal right (if he had it) could hardly come and ask for costs, as he would do in respect of proceedings taken under the authority of the Great Seal. But in spite of these considerations, the fact that liberty to traverse was usually applied for probably contributed to the growth of the idea that no right to traverse existed. Another circumstance which told in the same direction was the fact that the Lord Chancellor, when applied to for liberty to traverse, undoubtedly exercised a certain jurisdiction over the application. It was his duty to see that it was really the application of the party in whose name it was made, and that the party was able to exercise volition in regard to it. With a few exceptions,[3] it will be found that in every case in which liberty to traverse has been withheld, the refusal has rested on the exercise, not of any discretion by the Lord Chancellor, but of his jurisdiction in regard to one or other of the points above mentioned, viz. that the applicant had no interest,[4] or that the lunatic was

Why?

(*b*) Jurisdiction of Lord Chancellor over application.

[1] 1748, cited and examined by Lord St. Leonards, L.C., in *re Cumming*, 1852, 1 De G. M. & G., at p. 551, noted as *re Heli* in 3 Atk. 365.

[2] *Ubi sup.*, at pp. 548-9.

[3] *Ex parte Saumarez*, 1823, Cr. & Ph. 342 n. (*a*), where the grounds of the refusal of liberty to traverse are not stated. As the case was, however, decided by Lord Eldon, it would probably be found to be an authority in favour of the proposition stated in the text, if the facts were known. *Scowrefield's case*, 8 Jac. I., Ley. 22; *Sir John Cutt's case*, *ib.* 26 and 27.

[4] Cp. *ex parte Barnsley*, 1744, 3 Atk. 184; *re Fust*, 1878, 1 Cox 418; *ex parte Ward*, 1801, 6 Ves. 579; *Ludlam's*

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incompetent to form and express a wish for a traverse.[1] It cannot be denied, however, that there are many *dicta* to the effect that the grant of a traverse is discretionary. Lord Hardwicke expressed an opinion to this effect in *ex parte Roberts*;[2] Lord King appears to have taken the same view in a case which is reported under different names;[3] and Lord Thurlow followed suit in *re Fust*.[4]

(c) "Untruly founden" lunatic.

The last circumstance which helped to produce the impression that liberty to traverse was at the discretion of the Court was the fact that the statute 2 & 3 Edw. VI. c. 8, spoke of those "untruly founden" lunatic,—language which seemed to point to some form of preliminary inquiry—and gave only "the like remedy and advantage as in other cases of traverse upon untrue inquisitions." This remedy in the case of traverse in reference to lands was said to be confined by the statutes 8 Hen. VI. c. 16, and 36 Edw. III. c. 13, to such parties as could "show good evidence proving their traverse to be true," and it was contended that a party found lunatic, and desirous of traversing had the same kind of obligation resting upon him—to show reasonable grounds for the allegation that the finding was wrong. The point taken under the statutes referred to was based upon a misconception which was lucidly explained by Lord St. Leonards, L.C., in *re Cumming*.[5] "The proposition," said his lordship, "(is) that under those statutes there could be no issuing of a traverse in the cases of escheats generally until the title of the party had been established and proved, and that so . . . the words . . . giving the party the like remedy and advantage as in other cases of traverse upon untrue inquisitions, require a title to be shown before the application can be granted. This argument, however, proceeds upon a mistake, because the right given to a party in regard to lands and upon ordinary escheats was not only the right to traverse, but was also the right to have the lands demised to him for a certain time during the existence of the trial: the party asserting his right to traverse as against the Crown had that right, and, on showing his title to the satisfaction of the Chancellor, had also a right to have the very lands which he claimed demised to him, so as to secure to the Crown a rent if he turned out to be wrong, and to secure to himself the possession of the lands if he turned out to be right."

re Cumming.

Right to traverse *de jure*.

The proposition that a traverse is *de jure*, subject to the condi-

case, Collinson, i. 167, 172, ii. 735, 741. In *re Sadler*, 1816, 1 Madd. 581, which was not a case of lunacy, the headnote runs, "Application for leave to traverse refused, no evidence being produced except the oath of the applicant to *invalidate the inquisition*." It is clear, however, that the words in italics are inaccurate. The application was refused because no *primâ facie* case was made out to show a sufficient interest in the petitioner. *Ex parte Morley*, cit. 7 Ves. 261.

[1] Cp. *re Cumming*, 1852, 1 De G. M. & G., per Lord St. Leonards, L.C., at p. 554. But the fact that the Court is not dissatisfied with the return (*ex parte Wragg*, *ex parte Ferne*, 1800, 5 Ves. 450), or sees that the lunatic, while able and competent to form and express a wish for a traverse, has manifest delusion on certain points (*ex parte Morley*, *ubi sup.*, *re Bridge*, 1841, Cr. & Ph. 338), is no reason for refusing liberty.

[2] 1743, 3 Atk. 7.

[3] 1728, *Mrs. Smithie*, 3 Atk. 7; *ex parte Smith*, 3 Atk. 185; and *Anon.*, 1728, Moseley 71.

[4] *Ubi sup.*

[5] *Ubi sup.*, at pp. 546-7.

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tion stated above (*ante* p. 306), was laid down by Lord Rossyln in *ex parte Wragg, ex parte Ferne*;[1] by Lord Eldon in *ex parte Ward*,[2] and *Sherwood* v. *Sanderson*;[3] by Lord Cottenham in *re Bridge*;[4] and finally by Lord St. Leonards in *re Cumming* (*sup.* p. 308, note 1), which is the *locus classicus* in regard to this point.

Alienee.

(2) The alienee of a lunatic[5] or other person having a legal or equitable title to, or interest in, his estate[6] may traverse. In one case, however, Sir William Grant, M.R., is reported to have expressed a doubt whether, the alienation having been overreached by an inquisition finding the party a lunatic, with lucid intervals, the alienee, relying on the fact that the contract was executed during a lucid interval, could establish that fact by a traverse, an issue being in such a case the proper and effectual remedy. It would seem to be doubtful whether a person having a merely expectant interest under a lunatic's will will be permitted to traverse.[7] The history of the establishment of the right of the alienee has already been sketched in connection with the right of the lunatic to traverse an inquisition, *v. sup.* p. 306. In the case of alienees and third parties generally, the Court has jurisdiction to consider whether the applicant for liberty to traverse has sufficient interest to make him a person "aggrieved" by the finding on the inquisition, within the meaning of 2 & 3 Edw. VI. c. 8, sec. 6.[8]

Or third party with sufficient interest.

Husband or wife of lunatic.

(3) The husband or wife of the lunatic may traverse, see notes to (1), *sup.*, and (2), *sup.* In *re Fust*[9] Lord Thurlow refused leave to the husband of a lunatic to traverse under the following circumstances. A man had married a woman under circumstances which rendered it necessary to impeach the marriage: a commission would have enabled the parties to do this, and the traverse would have had the effect of

[1] 1800, 5 Ves. 450. In *ex parte Southcot*, 1751, Ambl. 109, 2 Ves. sen. 401, which was an application, not for leave to traverse, but for an inquisition, the law on the former point had already been stated to be that anybody may apply on behalf of the lunatic to traverse the commission, but that the lunatic must appear to be examined *coram rege in concilio*, meaning by these words the Court of Chancery; and cp. *re Cumming*, *ubi sup.*, at p. 558, where the lunatic was ordered to attend for examination, and did attend, and was examined by the Lord Chancellor.

[2] 1801, 6 Ves. 579.

[3] 1815, 19 Ves., at p. 287.

[4] 1841, Cr. & Ph. 338; also by Lord Truro in *ex parte Hartley, ex parte Loveday*, and several other instances, none of which are reported, see 1 De G. M. & G., at p. 541. *Re Bridge*, *sup.* p. 308, note 1, was decided after the passing of 6 Geo. IV. c. 53, directing the Lord Chancellor to "hear and determine" petitions to traverse; and both in that case and in *re Cumming*, *ubi sup.*, it was held that that statute had not altered the law. Cp. *re Parry*, 1866, L.R. 2 Eq. 95.

[5] *Sherwood* v. *Sanderson*, 1815, 19 Ves. 287.

[6] Vin. Abr. tit. "Lunatic" (L); *ex parte Hall*, 1802, 7 Ves. 260; *Neill* v. *Morley*, 1804, 9 Ves. 478. In *A.-G.* v. *Parkhurst*, 20 Car. II., 1 Ch. Ca. 113, the passing of a decree against a defendant in a suit in Chancery was stayed for the purpose of giving him liberty to traverse an inquisition.

[7] Cp. *Sackvill* v. *Ayleworth*, 1682, 1 Vern. 105; *Lord Dursley* v. *Fitzhardinge*, 1801, 6 Ves. 251, 260; *Earl Belfast* v. *Chichester*, 1821, 2 Jac. & W. 439; *Allan* v. *Allan*, 1808, 15 Ves. 130; *Campbell* v. *Earl of Dalhousie*, 1868, L.R., 1 H.L. Sc. 462; and *per contra re Tayleur*, 1871, 6 Ch. 416. *Re Christie*, 1835, 5 Paige 242; *re Giles*, 1844, 11 *ib.* 243, person empowered by, or contracting with, lunatic may traverse.

[8] *Hall* v. *Warren*, 1804, 9 Ves. 605.

[9] *Re Fust*, 1787, 1 Cox 418; *ex parte Ward*, 1801, 6 Ves. 579.

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defeating the attempt. It was not doubted, however, that leave might have been given, but for the position in which the applicant was placed; and in *re Nugent*[1] leave was granted to a wife as of course.

Inquisition not traversable after death of lunatic.

(4) An inquisition cannot be traversed after the death of the lunatic by his heir-at-law or any other person, for the party on every traverse may be required to appear in person.[2]

Crown.

(5) The Crown cannot traverse, nor is a *melius inquirendum* now issued; the proper course is to apply for another commission, *v. ante* p. 290.

Desiring to traverse.—The inquisition may in certain cases be quashed, *v. ante* p. 289, or superseded, *v.* sec. 105, *inf.*, and notes. As to the origin of the right to traverse, see *ante* p. 306.

Procedure on traverses.

The existing procedure in regard to traverses is as follows.

Petition.

The application for leave to traverse is made by petition (Rules in Lunacy, 1892, r. 17, *post*), which must be filed at the Masters' Office (*ib.* r. 18, *post*) within three months next after the day of the return (as to which see *ante* p. 288) of the inquisition (sec. 101, subs. (1), *sup.*), otherwise the right is barred, unless the Judge in Lunacy grant an extension of time (sec. 102, *post*). See forms of petition, *post* Appx.

Affidavits.

The petition should be supported by affidavits by the petitioner and any other persons verifying the allegations contained in it (see forms of such affidavits, *post* Appx.), which should be filed with the petition (Rules of 1892, r. 18, *post*). The petition and the evidence in support of it are brought before the Judge in Lunacy out of Court (*ib.* r. 23, *post*) without previous consideration by the Master (*ib.* r. 18, *post*), and the Judge may

Order.

make an order upon the petition without the attendance of counsel, solicitors, or parties, or after such attendance, or may adjourn the petition into Court, or refer it to the Master for inquiry, or further inquiry upon any matter (*ib.* r. 23, *post*). The Judge may also direct any person to be served with notice of the petition, or may dispense with service upon any person (*ib.* r. 24, *post*). See forms of orders, *post* Appx. As to circumstances in which an order may be refused, see *ante* p. 306.

Contents of order.

If leave is granted, the Judge—(1) must in his order limit a time, not exceeding six months from the date of the order, within which the parties are to proceed to trial, subs. (2) *inf.*; and (2) may also in his order, or by any other order, order the applicant—

Time.

Security.

" not being the person the object of the inquisition "—to give security to the Masters within three weeks from the date of the order for all parties proceeding to trial within the time limited, subs. 3, *inf.* Neglect or failure to give such security, or to proceed to trial within the time limited, absolutely bars the right to traverse unless the Judge grant an extension of time.[3] An office copy of the order is then

[1] 1817, 2 Moll. 517.

[2] Per Lord Hardwicke, L.C., in *re Roberts*, 1743, 3 Atk. 312. In *Ripley* v. *Oldfield*, 34 Car. II., Sir T. Jones 198, it was said that the inquisition of a coroner finding a party *felo de se* may be traversed by his administrator, on the ground that the party was of non-sane memory, and that the coroner had refused to receive evidence of the fact.

[3] A postponement may be granted on the ground of absence of material witnesses or want of time, *re Turner*, 1826, Shelf. Lun. 146.

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left at the Crown Office Department of the Central Office of the Supreme Court, where the traverse is drawn up and filed. See form of traverse, *post* Appx. After the traverse has been filed, an office copy of it is taken by the prosecutor of the commission, by whom issue is joined in the name of the Attorney-General on behalf of the Crown.[1] See form of joinder of issue, *post* Appx. The joinder of issue will be bad if either the committee or the prosecutor of the commission plead in his own name,[2] or if the plea to the traverse takes up a fact not stated in it.[3] After joinder of issue a *venire facias* is awarded, returnable into the Queen's Bench Division.[4] The trial may take place either in London or at the assizes,[5] and may be directed to be held in a county other than that in which the commission was executed, if circumstances render the change desirable.[6] In practice traverses will usually be tried with a special jury, but there would seem to be no objection to trial by a common jury, unless the order for the traverse otherwise directed.[7] The lunatic must be present at the trial,[8] and a *habeas corpus* will if necessary be granted to secure his attendance.[9] The evidence is limited to the matters specified in sec. 98, subs. (1), *ante*, and it would appear that, by what is conceived to be an omission in that subsection, the Judge trying a traverse has no power to relax the rule which it lays down. See observations on this subject, *ante* p. 302.

Joinder of issue.

Trial.

Jury or not.

Evidence.

The verdict on a traverse is returnable into the Crown Office. If it confirms the finding on the inquisition, the proceedings in lunacy continue;[10] if it reverses that finding, they are at once arrested. As to the costs of a traverse, see sec. 109, *post*, and notes thereon. As to second traverses, see sec. 103.

Verdict.

Costs.

Traverse by a lunatic does not bind an alienee or interested third party, unless he is a party to or consents to be bound by the proceeding.[11]

[1] As to where the prosecutor of the commission refuses to take any further step, see *re Crosbie*, 5 Ir. Jur., N.S., 257. Where the prosecutor of the commission became *non compos* after leave to traverse had been granted, the Court appointed interim committees of the lunatic's person, with liberty to take such proceedings as to traverse as they thought fit, *re Armstrong*, 1858, 2 De G. & J. 123.

[2] *Thorn* v. *Coward*, 1658, 2 Sid. 124.

[3] *Ex parte Ferne*, 1801, 5 Ves. 832.

[4] 4 Inst. 80, 1 Eq. Ca. Abr. 128. *Jeffreson* v. *Morton*, 21 & 22 Car. II., 2 Saund. 23; *ex parte Wragg*, 1800, 5 Ves. 452.

[5] Cp. *ex parte Ferne*, *ubi sup.*

[6] *Re Nugent*, 1817, 2 Moll. 517, where the traverse of an inquisition executed at Dublin was directed to be held in Kilkenny on the ground of the long residence of the lunatic in that county.

[7] Cp. *re Barnsley*, 1743, cit. Shelf. Lun. 98.

[8] *Ex parte Roberts*, 1743, 3 Atk. 7, and cp. Ambl. 112.

[9] *Re Turner*, 1824, cit. Shelf. 151. An interim order may be made restraining the committee of a lunatic from interfering with him if he come to England for the purpose of examination. Cp. *re Dyce Sombre*, 1849, 1 Mac. & G. 116 (a case of supersedeas).

[10] Cp. *post* p. 335.

[11] *Ex parte Roberts*, 1743, 3 Atk. 7, *re Roberts*, 1746, 3 Atk. 312. It is stated in some old authorities (Bull. N.P. 212, 3 Atk. 184) that leave to traverse may be granted upon terms which bind a third party by the event of the traverse; and a party submitting to be bound by such terms, and afterwards repudiating them, would be guilty of contempt. Cp. *ex parte Roberts*, 1746, 3 Atk. 308, 4 Bro. C.C. 238 n.

Sec. 101 (2).

An inquisition.—As to procedure on inquisition, see sec. 92, *ante*.

Not being a verdict, etc.—See sec. 104, *post*, and notes thereon.

High Court.—See notes to sec. 94, subs. (1), *ante*.

Within.—See *ante* p. 117.

Three months.—The limit of time was first prescribed by 6 Geo. IV. c. 53. The right is barred if not exercised within the three months, unless the Judge grant an extension of time, sec. 102, *post*, and *ante* p. 310. "Month" means calendar month, R.L. 1892, r. 4, *post*, and Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3.

The return of the inquisition.—See notes to sec. 92, *ante*.

Apply, etc.—As to procedure on application, see *sup.* p. 310.

The Judge in Lunacy.—See sec. 108, subs. (1), *post*.

(2) The Judge shall hear and determine the application, and shall in his order upon it for a traverse limit a time, not exceeding six months from the date of the order, within which the person desiring to traverse and all other proper parties are to proceed to trial of the traverse.

This subsection re-enacts the second clause of sec. 148 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

The Judge.—See sec. 108, *post*.

Hear and determine.—As to procedure, see notes to subs. (1), *sup.*

Order.—As to such orders, see notes to subs. (1), *ante*. The time must be limited in the order for a traverse. Security may be ordered by a subsequent order, see subs. (3), *inf.* An accidental omission to fix the limit of time may, however, be rectified at any time by the Judge, Rules in Lunacy, 1892, r. 68, *post*.

Limit a time.—This limit of the time was prescribed by 6 Geo. IV. c. 53. The right is barred if the parties do not proceed to trial within the six months, unless an extension of time is granted (sec. 102, *post*).

The person desiring to traverse.—See notes to subs. (1), *sup.*

All other proper parties, e.g. the prosecutor of the commission, see notes to subs. (1), *sup.* As to practice, where the prosecutor of the commission delays taking the proper steps, see *sup.* p. 311, note 1.

Proceed to trial.—These words have never been judicially defined; *semble*, so far as the parties are concerned, the case must be ready for trial within the six months, unless a delay is granted, as to which see sec. 102, *post*. Delay in the hearing of the traverse, owing to the state of legal business, would not bar the right to traverse.[1]

Trial of the traverse.—As to procedure, see notes to subs. (1), *sup.*

[1] Cp. *ex parte Saffery*, 1877, 5 Ch.D. 365.

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(3) The Judge may by the same or any other order direct that the person desiring to traverse, not being the person the object of the inquisition, shall within three weeks next after the date of the order, give sufficient security to and to the satisfaction of the Masters for all proper parties proceeding to trial within the time to be limited as aforesaid.

This subsection re-enacts the third clause of sec. 148 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

The Judge.—See sec. 108, subs. (1), *post.*

The same or any other order.—As to such orders, see notes to subs. (1), *sup.* The time for proceeding to trial must be fixed in the order for a traverse, subs. (2), *sup.*

The person desiring to traverse.—See notes to subs. (1), *sup.*

Not being, etc.—No security is demandable from the lunatic.

Within.—See *ante* p. 117.

Three weeks . . . sufficient security.—This provision was first enacted by 6 Geo. IV. c. 53, sec. 1. As to other terms on which leave to traverse has been granted, see notes to subs. (1), *sup.* See form of order for security, Appx. *post.*

The date of the order, i.e. the order to find security.

The Masters.—Definition of, sec. 341, *post.* Appointment, etc., of, sec. 111, *post.*

All proper parties.—See notes to subs. (2), *sup.*

Proceeding to trial.— ,, ,,

The time limited.— ,, ,,

Persons not proceeding to trial within limited time barred.

102. Every person who does not within the appointed time apply for a traverse, or who refuses or neglects to give such security as aforesaid, or who does not proceed to trial within the appointed time, shall be absolutely barred of the right of traverse: Provided that the Judge in Lunacy may, under the special circumstances of any particular case, extend the time upon such terms as he thinks just.

This section re-enacts sec. 149 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Every person.—As to who may traverse, see notes to sec. 101, subs. (1), *ante.*

The appointed time.—In the case of (*a*) an application for a traverse,

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Appointed time.

three months after the return of the inquisition, sec. 101, subs. (1), *ante;* (*b*) an order for security, three weeks after the date of the order requiring security, *ib.* subs. (3), *ante;* (*c*) the order fixing the time for proceeding to trial, not more than six months after the date of the order, *ib.* subs. (2), *ante.*

Apply for a traverse.—As to such applications, see sec. 101, subs. (1), *ante.*

Security.—See sec. 101, subs. (3), *ante.*

Proceed to trial.—See note to sec. 101, subs. (2), *ante.*

Absolutely barred of, etc.—As to the right to traverse, see sec. 101, subs. (1), *ante.*

The Judge in Lunacy.—See sec. 108, subs. (1), *post.*

The special circumstances.—As, *e.g.*, where material witnesses are absent, or where the parties have not had sufficient time to prepare for trial.[1]

Such terms.—As to costs or otherwise.

Judge may direct new trials.

103. If the Judge in Lunacy is dissatisfied with the verdict returned upon a traverse, he may order one or more new trial or trials thereon, as he thinks fit; but no person shall be admitted to traverse oftener than once.

There was a similar provision in 6 Geo. IV. c. 53, sec. 3, reproduced in sec. 150 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), which this section re-enacts.

New trial of action

When the Court of Chancery directed an *action* to be tried in a Court of law, the rule of practice was that an application for a new trial should be made to the Court of law which had tried the action.[2] The theory was that the action was not tried unless and until the Court in which it was depending was satisfied with the verdict,[3] so that the record could be sent back with final judgment upon it.[4]

of issue.

In the case of an *issue*, however, the practice was different. There the application for a new trial might be made in the Court of Chancery itself.[2]

Traverses on same footing as issue.

Sec. 3 of 6 Geo. IV. c. 53, put traverses on the same footing as issues directed by the Court of Chancery.[5] It is therefore to the Judge in Lunacy (see sec. 108, subs. (1), *post*), and not to the Court of Appeal, that applications for new trials in such cases must now primarily be made. If the section expressly provided for such applications, it is conceived that under rule 19 of the Rules in Lunacy, 1892, *post*, the proper procedure would be by summons return-

[1] *Re Turner*, 1826, cit. Shelf. Lun., at p. 146.

[2] *Ex parte Kensington*, 1815, Coop. C.C. p. 96, even where the objection related to the admissibility of evidence, *Bowker* v. *Nixon*, 1816, 6 Taunt. 444.

[3] *Carstairs* v. *Stein*, 1815, 4 M. & S., at p. 196.

[4] *Ex parte Barker*, 1787, 1 Cox 418; and cp. *R.* v. *Knox*, 1815, Coop. C.C. 98.

[5] In *R.* v. *Roberts*, 17 Geo. II. 2 Str. 1208, a motion for a new trial of a traverse was successfully made in the Court of King's Bench.

able at Chambers before a Master; but as it does not do this, it is submitted that the application should be made by motion before the Lords Justices in Lunacy in like manner, and subject to the same conditions, as a motion for a new trial before the Court of Appeal, under Order xxxix. of the R. S. C. 1883; and cp. notes to sec. 108, subs. (1), *post*. If the Judge in Lunacy refuse to grant a new trial, it is possible that an application for one might be made with success to the Court of Appeal, to which motions to set aside verdicts, findings, or judgments in actions tried—as a traverse is (*v. ante* p. 311)—in the Queen's Bench Division are now brought. In *R.* v. *Roberts*[1]—decided prior to the enactment of 6 Geo. IV. c. 53—the Court of King's Bench directed a new trial at bar, after a traverse, although Lord Hardwicke had previously refused to grant it; and there does not seem to be anything either in 6 Geo. IV. c. 53, or in the Judicature Acts, to deprive the Queen's Bench Division of that jurisdiction.

Query whether application to Court of Appeal.

The Judge in Lunacy.—See general note, *sup.*, and sec. 108, subs. (1), *post*.

Dissatisfied.—It is conceived that the Judge in Lunacy could order a new trial *ex proprio motu* if he is dissatisfied with the return to the traverse. In point of practice, however, the jurisdiction conferred by this section would scarcely be exercised except upon an application by a party to the traverse. It will be observed that the section, while providing that no person shall be admitted to traverse more than once, does not either expressly or by implication prevent any person from applying for a new trial.

The verdict returned.—As to return of the verdict, see *ante* p. 311.

A traverse.—As to origin and character of right to, and procedure on, traverse, see notes to sec. 101, subs. (1), *ante*.

One or more new trial or trials.—See general note, *sup.*

As to new trial of issues, see sec. 104, *inf.*

Admitted.—Not only is there no *right* to a second traverse; it is not to be *admitted* under any circumstances.

104. A traverse of a verdict upon an issue tried in the High Court shall not be allowed, but the Judge in Lunacy may, if he thinks fit, upon application within three months next after the trial of any such issue, order a new trial of the issue, or a new inquisition as to the insanity of the alleged lunatic, subject to such directions and upon such conditions as to the Judge may seem proper.

New trial of an issue.

This section re-enacts sec. 7 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86). Lord Westbury, who was the author of that statute, probably anticipated that the trial in the superior Courts

Origin of section.

[1] 17 Geo. II., 2 Str. 1208.

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which it substituted for an inquisition before a Master would largely supersede the latter procedure (*v. ante* p. 292), and that consequently the prohibition of traverses in the case of issues tried in this way would be tantamount to the abolition of traverses altogether. In point of fact, however, only one inquisition has yet been tried as an issue before a High Court Judge—*re Scott*,[1]—and in that case no application for a new trial was made.[2]

A traverse.—See notes to sec. 101, subs. (1), *ante*.

A verdict upon an issue.—See sec. 94, subs. (1), *ante*.

The High Court.—See sec. 94, subs. (1), *ante*.

The Judge in Lunacy.—See notes to sec. 103, *ante*, and sec. 108, subs. (1), *post*.

Application how made.

Application.—It is conceived that under rule 19 of the Rules in Lunacy 1892, *post*, the application under this section should be made by summons[3] at Chambers before the Master, supported by such evidence[4] on affidavit—which is not filed—as the applicant desires to adduce. The application is considered by the Master, who prepares the minutes of the order, if any, which he thinks should be made, and brings the application, with the evidence and the minutes, before the Judge (r. 22, *post*) out of Court (r. 23, *post*), who may make the order.

Order.

order without attendance of counsel, solicitors, or parties, or after such attendance, or adjourn the application into Court, or refer it to the Master for further inquiry upon any matter (r. 23, *post*). Only one summons is to be issued on the same application (r. 25, *post*). As to the preparation (*a*) of summonses, see rules 93-99, *post*; (*b*) of orders, see rules 60-68, *post*. For form of summons, see Form 13, Rules in Lunacy, 1892, *post*. For form of order, see *post* Appx.

Within.—See *ante* p. 117.

Three months next.—This time was fixed by sec. 7 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86).

"Months" means calendar months, R.L. 1892, r. 4, *post*, and Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3.

Order.—See notes to "application," *sup.*

Can Judge in Lunacy order inquisition under section 104 ?

A new trial . . . a new inquisition.—These words give rise to a difficulty. Has the Judge in Lunacy, on applications under this section, power to order, instead of a new trial in the Queen's Bench Division, an inquisition either in the High Court or before a Master in Lunacy? It is conceived that he has. The use of the word *new* of course gives rise to difficulty, because, in the case of applications under this section, no previous inquisition, as distinguished from the trial of an issue, has been held. But it is submitted that the solution

[1] 1884, 27 Ch.D. 116.

[2] An application was made to the Lords Justices in Lunacy for a declaration that the inquiry and the certificate of the finding of the jury were irregular and void, and that some order might be made with a view of determining the subject of the petition; but there was no application under sec. 7 of the Act of 1862 for a new trial. Cp. the language of Baggallay, L.J., *ubi sup.*, at p. 119.

[3] If the applicant proceeds by petition without the direction of the Master, no further costs will be allowed than upon a summons, r. 21, *post*.

[4] As to evidence, see rr. 85-91, *post*, and *ante*, p. 259.

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of the problem is as follows. The word *inquisition* is here equivalent to *inquiry* (the term in fact used in sec. 7 of the Lunacy Regulation Act 1862, which this section re-enacts). When the Judge in Lunacy orders an inquisition or inquiry before a jury, he may direct it to be held in the form of an issue before the High Court, sec. 94, subs. (1), *ante*. (*Semble*, an inquisition cannot be ordered before the High Court on the original application in any other form.) On an application under this section he may order either a new trial of the issue in the High Court or a new inquisition or inquiry to be made either in the High Court or before a Master, with or without a jury. The right of the lunatic to demand a jury is confined to the original inquiry, unless he traverse,[1] and no traverse is admissible in the class of cases under consideration. It is conceived that this construction is supported by the clause as to *directions* and *conditions*, and also by the probability that the Legislature intended, in cases where a second lunacy inquiry was unfortunately necessary, to give the Judge as free a hand as possible in determining the mode of trial most likely in his judgment to make it a final one.

The issue.—As to what the issue is, see sec. 94, sub. (1), *ante*.

Subject to, etc.—See notes to "new trial," *sup.*

Commission may be superseded on conditions.

105. If it appears to the Judge in Lunacy that it is not expedient or for the benefit of the lunatic that the commission should be unconditionally superseded, but that the same should be superseded on terms and conditions, he may, upon the consent of the lunatic and any other persons whose consent he deems necessary, order the commission to be superseded upon such terms and conditions as he thinks proper, and the Judge may make such orders as he thinks fit for giving effect to such terms and conditions.

This section re-enacts sec. 152 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), and sec. 10 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86). The former of these two sections gave the Judge power to supersede a commission conditionally only where a traverse had been applied for; the latter removed this restriction.

If it appears.—Either on an application for leave to traverse or on a petition for a supersedeas, see general note, *sup.* It would seem that on a petition for an absolute supersedeas the Judge cannot grant a conditional one except with the lunatic's consent. He may, however, suspend the proceedings under the commission for a time, on such terms as he thinks fit, without any consent on the part of the lunatic.[2]

[1] *Re Talbot*, 1882, 20 Ch.D., at p. 272.

[2] *Re Blackmore*, 1862, 32 L.J. Ch., N.S., 436.

Sec. 106 (1).

Practically this might amount to a conditional supersedeas. In *re Blackmore*,[1] for instance, the proceedings were suspended till further order, the lunatic having full personal liberty and control over his property, with leave to apply allowed him.

The Judge in Lunacy.—See sec. 108, subs. (1), *post.*

The lunatic.—See definition of, sec. 341, *post.*

The commission.—See definition of, sec. 334, *post.*

Conditional supersedeas.

Unconditionally superseded.—The conditional supersedeas provided for by this section, and the partial supersedeas provided for by sec. 106, *post*, are quite different procedures from absolute supersedeas at the instance of the lunatic, as to which see notes to "ordinary proceedings for a supersedeas" in sec. 106, *post.*

The consent of the lunatic.—Owing to the necessity of the lunatic's consent, the existence of the power conferred by this section cannot be regarded as in any way militating against the proposition (*v. ante* p. 308) that the lunatic has an absolute right to traverse. See notes to "if it appears," *sup.*

Order.—See form of order, Appx. *post.*

Power to supersede inquisition as regards commitment of person. (Act of 1889, sec. 49, subs. (1).)

106. (1) The Judge in Lunacy, if satisfied by a report of the Commissioners, or of one of the Chancery Visitors, or on any other evidence, that a lunatic so found by inquisition is cured or capable of managing himself, and not dangerous to himself or others, though incapable of managing his affairs, may, if he thinks it desirable that the ordinary proceedings for a supersedeas should not be insisted on, by order supersede the inquisition, so far as the same finds that the lunatic is incapable of managing himself, and rescind or vary any order for the commitment of the person of the lunatic.

Origin of section.

This subsection re-enacts sec. 49, subs. (1) of the Lunacy Act 1889. It is ancillary to sec. 98, subs. (2), *ante*, which provides for a special verdict on an inquisition that a person, though incapable of managing his affairs, is capable of managing himself, and which was passed on the suggestion of the Dillwyn Committee (Report 1878, *ante* p. 74), that it might tend to prevent wealthy persons being deprived of their liberty by their relatives for the sake of their property. Before the passing of the Act of 1889 a commission could not be superseded as to the person of the lunatic, and at the same time continued in force against the parties accountable for the lunatic's estate.[2]

The Judge in Lunacy.—See sec. 108, subs. (1), *post.*

[1] 1862, 32 L.J. Ch., N.S., 436.

[2] *Re Gordon (Countess of Stair's case)*, 1847, 2 Ph. 242. Here, however, the lunatic was allowed, without the commission being superseded, to have the control of her fortune, and to superin-

Sec. 106 (1).

A report of the Commissioners.—No express power is given to, nor is any express duty imposed upon, the Commissioners in Lunacy to make reports of this kind. It might be held, however, that the statutory right and duty were created by implication by this section. But, apart from the statute, the Commissioners in Lunacy are, in a sense, ministerial officers of the Judge in Lunacy, and may at any time, and in all proper cases ought to, make reports to him on matters coming within his jurisdiction. It is conceived that reports of this description would be treated as strictly confidential, see *re H. W. Strachan*.[1] See following note. Definition of "Commissioners," sec. 341, *post*. Appointment, etc., of, sec. 150, *post*. Inquiries as to property of persons detained as lunatics, but not so found, may be ordered by or on the representation of the Commissioners, see sec. 50, *ante*; and an inquisition may be ordered on their reports, see sec. 100, *ante*.

Or of one of the Chancery Visitors.—As to appointment, etc., of, sec. 163, *post*. The Chancery Visitors have express power given to, and an express duty imposed on, them by sec. 185, subs. (2), *post*, to make special or separate reports. Their reports are secret, sec. 186, *post*. See preceding note. One of the medical Chancery visitors is frequently requested by the Judge in Lunacy to visit patients for the purposes of this section.

On any other evidence.—It is conceived that these words enable a lunatic so found to apply for a partial supersedeas instead of an absolute one, and also empower the Judge in Lunacy, on an application for an absolute supersedeas, to grant a partial one,[2] as the subsequent words, "the ordinary proceedings should not be insisted on," appear to extend the summary remedy created by the section to cases where the ordinary proceedings have been taken. If the lunatic applies in the first instance for a partial supersedeas, it is submitted that the application should be made by summons[3] at Chambers before the Master (r. 19, Rules in Lunacy, 1892, *post*), supported on such evidence on affidavit[4] (which need not be filed) as the applicant thinks desirable. The Master prepares the minutes of the order,[5] if any, which he thinks ought to be made, and brings the application, with the evidence and the minutes, before the Judge (r. 22, *ib.*, *post*) out of Court (r. 23, *post*).[6] The order may be made on such terms

Procedure on application for partial supersedeas.

tend the prosecution of accounts against accounting parties without the intervention of the committee. See form of order at p. 244, and cp. *re Blackmore*, *ubi sup.*, and *post*, Appx.

[1] 1895, 1 Ch. cit. p. 444.

[2] He may temporarily suspend proceedings under the inquisition, *re Gordon* (*Countess of Stair's case*), 1847, 2 Ph. 242.

[3] *Semble*, the provision in rule 17 of the Rules in Lunacy, 1892, *post*, that an application for a supersedeas shall be made by petition is confined to absolute supersedeas. As to form of summons, see Form 13, Rules in Lunacy, 1892, *post*. As to preparation of summonses, see rules 93-99, *post*. If the application is made by petition without the direction of a Judge or Master, only the costs of a summons will be allowed, r. 21, *ib.*, *post*. Only one summons is to be issued on the same application, r. 25, *ib.*, *post*.

[4] As to evidence on affidavit, see rr. 85-91, Rules in Lunacy, 1892, *post*.

[5] As to orders, see rules 60-68, *ib.*, *post*. See form of order, *post* Appx.

[6] As to the powers of the Judge on such applications, see rules 23-25, *ib.*, *post*.

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and conditions as the Judge thinks fit, subs. (2), *inf.*; and notice of it is to be given to the committee of the person and the person under whose care the lunatic is, subs. (3), *inf.* As to ordinary proceedings for supersedeas, see *inf.* As to costs, see sec. 109, *post.*

Lunatic.—Definition of, sec. 341, *post.*

So found by inquisition.—As to inquisition, see notes to sec. 90, subs. (1), *ante*, and sec. 92, *ante.*

Forms of supersedeas.

The ordinary proceedings for a supersedeas.—There are three forms of supersedeas: (1) conditional, as to which see sec. 105, *ante;* (2) partial, as to which see notes, *sup.*; and (3), absolute.[1] The absolute form is the one referred to here. It may be granted either on formal grounds, as *e.g.* where the party has been irregularly found lunatic,[2] or there has been improper conduct on the part of the person executing the commission, or of the witnesses,[3] or the verdict has some flaw in it,[4] or—which is the main object of a supersedeas—on the ground of the lunatic's recovery.

Absolute supersedeas; grounds for, (1) formal, (2) recovery.

Application by petition.

The application for an absolute supersedeas is made by petition, which should be signed by the petitioner and attested by a solicitor (Rules in Lunacy, 1892, r. 17, *post*).[5] For form of petition, see *post* Appx. The petition should be in the name of the person who is alleged to have recovered his soundness of mind, and not in that of his next-of-kin or any third parties,[6] although it seems that the committees may be joined.[7] Third parties may, however, petition for a supersedeas in the lunatic's name.[8] The question whether the Judge in Lunacy has power to make third parties pay the costs of a reckless and unfounded petition has been raised.[9] It is conceived, however, that this question[10] must be answered in the affirmative. In *re Dyce Sombre*,[8] Lord Cottenham, L.C., in dealing with a vexatious petition originating with third parties, said: "I must dismiss this petition, and if I had the means of making those pay the costs of it from whom it originated, I should dismiss it with costs; but as the matter stands I cannot say anything about costs." This language appears to be limited, however, to the particular case before the Court. In a previous application in the same lunacy for a supersedeas Lord Cottenham directed the petition to stand over as to costs, thinking that the pending of the question as to costs would afford some security against any unnecessary and therefore improper repetition of such application without a sufficient case to support it.[11] It is

By whom?

Power of Judge to make third parties pay costs.

[1] As to the power of the Judge to suspend proceedings under an inquisition temporarily on terms, see *re Gordon* (*Countess of Stair's case*), 1847, 2 Ph. 242.

[2] *Ex parte Roberts*, 1743, 3 Atk. 6. The better procedure in the case of formal objections to an inquisition would be an application to quash it (*v. ante* p. 289).

[3] *Ex parte Glover*, *in re Glover*, 1816, 1 Mer. 269.

[4] *Re Wooler*, 1825, Shelf. Lun. 124; *re Warren*, 1824, *ib.* 125.

[5] Under the Rules in Lunacy, 1890, r. 16.

[6] *Ex parte Stanley*, 1750, 2 Ves. sen. 25.

[7] *Ex parte Bumpton*, 1728, Mos. Ch. 78.

[8] Cp. *re Dyce Sombre*, 1849, 1 Mac. & G. 116, where several successive petitions originated with third parties.

[9] See Pope on Lunacy, p. 204, where a negative opinion is expressed.

[10] *Ubi sup.*, at p. 136.

[11] *Ubi sup.*, at p. 121. In the headnote to this case, at p. 116, the reporter

Sec. 106 (1).

scarcely to be imagined that he would have taken this course if the threat to make the third parties pay costs had been a mere *brutum fulmen;* and in any event, sec. 109, *post*, seems to give the Judge in Lunacy ample power to deal with the costs of a supersedeas.

Affidavits.

The petition for a supersedeas must be supported by affidavits[1] —preferably by medical men—and, in any case, by persons "having competent knowledge upon the whole of the subject, not only as to the present state of the party, but with reference to all the former evidence."[2] As to the evidence on which a commission will be superseded, see *inf.* p. 322. The petition and the evidence in support of it are filed in the Masters' Office, and brought before the Judge out of Court (r. 23, *post*) without previous consideration by the Master (r. 18, *post*). A time is then appointed for the appearance of the lunatic before the Judge in order that he may be examined.[3] A petition for a supersedeas will not be entertained unless the lunatic either appears personally before the Judge for examination, or, *e.g.* in the case of a person labouring under some physical infirmity so that he cannot be brought up, is in such a situation as that he may be examined by persons acting under the authority of the Great Seal.[4] Possibly the attendance of the lunatic might not be insisted upon if the question of sanity had already been decided by a competent tribunal abroad.[5] In order to induce a lunatic so found, who is abroad, to come to this country for examination on an application for a supersedeas, an undertaking has been given by the committee of his person that no restraint should be imposed upon him unless by the direction of the Lord Chancellor.[6]

Evidence.

Appearance of lunatic.

The evidence necessary to justify the supersedeas of a commission

says: "*Semble*, that for the purpose of discouraging improper applications for a supersedeas the Lord Chancellor will not adjudicate upon a case in favour of the petitioner where it clearly appears that improper means have been used in getting up the petition." Whether the Judge in Lunacy has such a power or not, there does not appear to be anything in the report to justify this note. In the previous petition referred to above the application was refused, although no order was drawn up, and it was only the question of costs that was not adjudicated upon. See as to costs of proceedings in the supreme court, the Judicature Act 1890, s. 5, and *re Fisher*, 1894, 1 Ch. 53, 450.

[1] See as to affidavits, rules 85-91, Rules in Lunacy, 1892, *post*. Forms of, *post* Appx.

[2] Per Lord Eldon, L.C., in *ex parte Holyland*, 1805, 11 Ves., at p. 10. The words "all the former evidence" include not only the evidence on the inquisition, but also the evidence on any previous application or applications for a supersedeas; and if adverse medical or other evidence has been given, the deponent should not only consider it before giving his own testimony, but should deal with it in his affidavit, *ex parte Holyland, ubi sup.*, per Lord Eldon, L.C., at p. 11. As to the necessity generally for clear evidence in cases of insanity see *A.-G.* v. *Parnther*, 1792, 3 Bro. C.C. 441, per Lord Loughborough, L.C.

[3] As to general powers of Judge in Lunacy in regard to hearing of, and orders upon, petitions, see Rules in Lunacy, 1892, r. 23. The Judge cannot, however, make an order for a supersedeas "without attendance" of the lunatic, see *sup.*

[4] Per Lord Cottenham, L.C., in *re Dyce Sombre*, 1844, 1 Ph., at p. 437; and cp. *ex parte Southcot*, 1751, Ambl. 111, 112; *re Gordon* (*Countess of Stair's case*), 1847, 2 Ph. 242.

[5] Per Lord Cottenham in *re Dyce Sombre, ubi sup.*, at p. 438.

[6] *Re Dyce Sombre, ubi sup.*, at p. 438. See a similar order on an inquisition, *re Naylor*, 1862, 1 N.R. 173.

Sec. 106 (1).

A.-G. v. *Parnther.*

has apparently given rise to some divergence of judicial opinion. Lord Thurlow is stated by Lord Eldon[1] to have said, in *A.-G.* v. *Parnther*,[2] that where lunacy is once established by clear evidence, a lucid interval could only be proved by clear and satisfactory evidence that the party had been restored to as perfect a state of mind as he had before. If this language was used by Lord Thurlow (see note (2), *inf.*), it is not an accurate statement of the law with reference either to lucid intervals[3] or to supersedeas, as it has been understood by his successors. In *ex parte Holyland*,[2] Lord Eldon said: "There may be frequent instances of men restored to a state of mind inferior to what they possessed before, yet it would not be right to support commissions against them." His Lordship further said: "Suppose the strongest mind reduced by the delirium of a fever, or any other cause, to a very inferior degree of capacity admitting of making a will of personal estate to which a boy of the age of fourteen is competent, the conclusion is not just that as that person is not what he had been, he should not be allowed to make a will of personal estate." The headnote to this case states that "to supersede a commission . . . competence to common purposes, as to make a will of personal estate, is sufficient." Lord Eldon does not, however, seem to have been formulating any test in the passage just quoted; he was simply rebutting by an illustration the suggestion that perfect recovery was necessary to justify a supersedeas. It is conceived that the law on this matter may be summarised as follows:—To justify the supersedeas of a commission, it is not necessary to show that the lunatic's mind has been restored to its original state,[4] although an impaired mental condition, resulting from insanity, is relevant evidence that the disorder has not been rooted out.[5] What must be shown—and shown conclusively—is restored competence on the part of the lunatic to manage himself and his affairs. The burden of establishing this fact positively, and therefore by stronger evidence than might have sufficed to defeat an inquisition, rests on the lunatic; and strict proof of it will be required, for a lunatic cannot at once assert his soundness of mind and claim the benefit of any relaxation of practice conceded to those of unsound mind.[6] The Court will not supersede a commission unless it is satisfied of the absence of the disorder—particularly if it be of a dangerous character—from which the lunatic suffered,[4] and it is doubtful—notwithstanding *Banks* v. *Goodfellow*[7] and similar cases—whether a commission would be superseded so

ex parte Holyland.

Statement of law.

Burden of proof.

[1] See *ex parte Holyland*, 1805, 11 Ves., at p. 10.

[2] 1792, 3 Bro. C.C., at p. 443. In this report the proposition is not put so high as Lord Eldon placed it. The words are: "It certainly is of equal importance that the evidence in support of the allegation of a lucid interval, after derangement at any period has been established, should be as strong and as demonstrative of such fact as where the object of the proof is to establish derangement." But the report in Brown was copied from the notes of Mr. Fonblanque, and was admitted (*v.* p. 440, n. (1)) to have been copied rather inaccurately.

[3] See *ante* p. 33.

[4] *Ex parte Holyland, ubi sup.*

[5] Per Lord Thurlow in *A.-G.* v. *Parnther, ubi sup.*, at p. 443.

[6] *Re Dyce Sombre*, 1849, 1 Mac. & G., per Lord Cottenham, L.C., at p. 119.

[7] 1870, L.R. 5 Q.B. 505.

long as any declared delusion, however immaterial, continued to exist.[1]

Sec. 106 (1), (2).

When on an application to supersede a commission the Judge is not satisfied as to the sanity of the party, he may either direct an issue to be tried by a jury[2] or suspend the proceedings under the commission temporarily on such terms as he thinks fit.[3] This course was adopted by Lord King in *Ferrar's case*,[4] by Lord Hardwicke in the cases of *Sir William Rooke*[5] and *Okeover*,[6] by Lord Thurlow in *Errington's case*[7]—the final order in which was made by Lord Loughborough,—by Lord Eldon in the cases of *Stocks*[8] and *Paine*,[9] in effect by Lords Lyndhurst and Cottenham in two stages of the *Dyce Sombre case*,[10] and by Lords Justices Turner and Knight-Bruce in *re Blackmore*.[11] It is now the general practice to make orders of this kind. See forms, Appx. *post*.

Where Judge not satisfied of sanity, may (1) direct issue, or (2) suspend proceedings.

If an order for a supersedeas is made, such terms and conditions as the Judge thinks fit may be inserted in it, subs. (2) *inf.*; and notice of it is to be given to the committee of the person, and also to the person under whose care the lunatic is, subs. (3), *inf.* For forms of order, see Appx. *post*. As to costs, see notes to sec. 109, *post*. As to discharge of committee upon issuing of supersedeas, see *post*.

Conditions.

It is stated by Shelford[12] that after an order has been made for a supersedeas the party must be restored to the government of himself and his property by a grant under the Great Seal. But in modern practice no further order is required than the order for the supersedeas and the writ of supersedeas (which latter contains a clause restoring the lunatic to the regimen of himself and all his) issuing thereupon.[13] The order and writ are prepared by the Master. As to preparation of orders, see Rules in Lunacy, 1892, rr. 60-68, *post*.

Should not be insisted on.—See notes to "any other evidence," *ante* p. 319.

By order.—See form of, Appx. *post*.

So far as . . . himself.—See general note at commencement of subsection.

Any order for . . . lunatic.—As to order appointing committee, see sec. 108, *post*.

(2) An order under this section may be made on such terms and conditions as the Judge thinks fit.

(Act of 1889, s. 49, subs. (2).)

[1] Cp. *re Dyce Sombre, ubi sup.*, at p. 132. The common relief of a temporary suspension of the proceedings under the commission would be granted in such cases.

[2] *Ex parte Holyland, ubi sup.* Here the commission had been supported by two former verdicts, the one upon an inquisition the other upon an issue. But there was considerable evidence that the lunatic had recovered.

[3] See *ante* p. 317.

[4] 1730, Mos. Ch.Ca. 332.

[5] 1737, cit. 1 De G. J. & S., at p. 86.

[6] 1745, cit. *ib.*

[7] 1798, cit. *ib.*

[8] 1813, cit. *ib.*

[9] 1822, cit. *ib.*

[10] 1844, 1 Ph. 436; 1847, 1 Mac. & G. 116.

[11] 1862, 1 De G. J. & S. 86.

[12] P. 282. The substance of the grant is set out *ad loc. cit.*

[13] Elmer, p. 120, and see form, Appx. *post*.

Sec. 106 (3).

This subsection re-enacts sec. 49, subs. (2) of the Lunacy Act 1889.

See notes to preceding subsection.

(Act of 1889, s. 49, subs. (3).)

(3) Notice of an order under this section shall be forthwith given to the committee of the person of the lunatic, and also to the person under whose care the lunatic is.

This subsection re-enacts sec. 49, subs. (3) of the Act of 1889.

See notes to subsection (1).

The committee of the person.—As to, see *post* p. 341.

The person under whose care.—As to reception of lunatic after inquisition, see sec. 12, *ante*.

Transmission of Inquisition and Supersedeas to Ireland and England.

Transmission of inquisition and supersedeas to Ireland and England.

107. Where it is desired that an inquisition taken, or a writ of supersedeas issued in England or Ireland, should be acted upon in Ireland or England, the proper officer may, under order of the Judge in Lunacy in England, or the Lord Chancellor for the time being entrusted by the sign manual of Her Majesty with the care and commitment of the custody of the persons and estates of lunatics in Ireland, as the case may be, transmit a transcript of the record of the inquisition, or of the writ, to the Registrar in Lunacy in Ireland or the High Court in England, as the case may be, which transcript shall thereupon be entered and be of record there respectively, and shall, when so entered of record, and if and so long only as the Lord Chancellor entrusted as aforesaid in Ireland and the Judge in Lunacy in England, as the case may be, thinks fit, be acted upon by them respectively, and be of the same validity and effect, to all intents and purposes, as if the inquisition had been taken or the writ issued in Ireland or England respectively.

Sec. 107.

Origin of section.

This section re-enacts sec. 52 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), which in turn was founded upon 9 Geo. IV. c. 78, sec. 3, and 11 Geo. IV. and 1 Will. IV. c. 65, sec. 41. It had been held in 1804 in the *Duchess of Chandos' case*,[1] that an inquisition in lunacy taken in England under a commission issued there finding a person *non compos*, was not a sufficient foundation for a grant of lands belonging to the lunatic in Ireland, but that there must be an inquisition and finding under the authority of the Great Seal in Ireland for that purpose. The object of the sections referred to was to remedy this state of things both as to inquisitions and, *mutatis mutandis*, as to writs of supersedeas.

It is desired.—The application was formerly made in England by petition.[2] But query whether it should not now be made by summons, Rules in Lunacy, 1892, r. 19, *post*. As to procedure by summons, see rr. 21-25, *post*. As to preparation, etc., of summonses, see rr. 93-99, *post*.

An inquisition taken in England.—See secs. 90 and 92, *ante*, as to procedure.

A writ of supersedeas.—See sec. 106, subs. (1), *ante*.

Or Ireland.—See sketch of procedure on inquisitions in Ireland, p. 84. It will be observed that this section does not apply to Scotland.[3] See secs. 131 and 134, *post*.

The proper officer.—The Judge in Lunacy in England, and the Lord Chancellor in Ireland, do not name the proper officer in the order.

Under order.—The substance of such an order, made by the Lord Chancellor of Ireland, is set out in *re Talbot*,[4] and in the Appendix, *post*.

The Judge in Lunacy.—See sec. 108, subs. (1), *inf*. See also rr. 21-25 of the Rules in Lunacy, 1892, *post*.

The Lord Chancellor . . . Ireland.—See definition of in sec. 12 of the Interpretation Act 1889 (52 & 53 Vict. c. 63) cited *ante* p. 198.

Transmit.—By sec. 149 (*c*), *post*, the provisions of this Act as to percentage and fees (see sec. 148, *post*, and rr. 126-129, Rules in Lunacy, 1892, *post*, and notes thereon) were extended to cases under this section.

See forms of exemplification from England to Ireland and *vice versa* in Appx. *post*. It will be observed that in the Irish exemplification (*a*) there is no writ of mittimus, and (*b*) an impression of the Great Seal is attached to it. In England there is a writ of mittimus and the Wafer Great Seal is used.

As to the transmission of the transcript proceedings under the Lunatics Removal (India) Act 1851 (14 & 15 Vict. c. 81), see sec. 6 of that statute, *post*.

[1] 1 Sch. & Lef. 301.

[2] Cp. *re Lord Creighton*, 1828, Shelf. Lun., 23.

[3] In *re Talbot*, 1882, 20 Ch.D., at pp. 272, 273, Jessel, M.R., treated sec. 52 of the Lunacy Regulation Act, 1853, which this section re-enacts, as applicable to Scotland. But this was an error. Both that section and the sections in the earlier statutes on which it was founded were confined to England and Ireland.

[4] 1882, 20 Ch.D., at p. 272.

Sec. 107.

The Registrar in Lunacy in Ireland.—As to this official, see Lunacy Regulation (Ireland) Act 1871 (34 Vict. c. 22), sec. 3.

The High Court.—As to High Court, see notes to sec. 94, subs. (1), *ante*.

Meaning of section.

And shall . . . respectively.—The meaning of the section is that the English or Irish Court may act upon the decision of the Irish or English Court without further inquiry. As a general rule credit is given to the propriety of the decision arrived at in Ireland or England, and any application either for the purpose of an inquisition or for a supersedeas must be made to the Court which originally made the order for the transmission of the transcript.[1] *Semble*, that there might be some extraordinary case of fraud or accident in which the Court might consider it not fit to act upon the decision, at all events until an opportunity had been given to reverse it or set it right;[2] and in *re Talbot*,[1] a petition for a supersedeas by a lady found lunatic in Ireland (a transcript of the record of the inquisition having been transmitted to England under sec. 52 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), which this section re-enacts) was allowed to stand over for three months for the purpose of enabling an application to be made to the Court in Ireland; the petition to be restored to the paper on the expiry of that period if an application was not made within the time limited. In that case Jessel, M.R., said that if the application in Ireland were to succeed, the lunatic might then apply in England for a stay of proceedings. It is conceived that now that the general principles on which the Courts will act in cases under this section have been judicially explained, an application for a stay of proceedings, to give effect to the Irish or English proceedings, ought to be made in the first instance.

Part IV.

JUDICIAL POWERS OVER PERSON AND ESTATE OF LUNATICS.

The Judge in Lunacy.

Jurisdiction of Judge in Lunacy.

108. (1) The jurisdiction of the Judge in Lunacy under this Act shall be exercised either by the Lord Chancellor for the time being entrusted by the sign manual of Her Majesty with the care and commitment of the custody of the persons and estates of lunatics, acting alone or jointly with any one or more of such Judges of the Supreme Court

[1] *Re Talbot*, 1882, 20 Ch.D. 272. [2] S.C., per Jessel, M.R., at p. 273.

as may for the time being be entrusted as aforesaid, or by any one or more of such Judges as aforesaid. Sec. 108 (1).

This subsection replaces sec. 7 of the Judicature Act 1875.

The origin and present position of the jurisdiction in lunacy may here appropriately be discussed. The jurisdiction in lunacy.

The Jurisdiction in Lunacy.[1]

Idiots.

The case of idiots has to be distinguished from that of lunatics in order to follow the growth of the jurisdiction clearly. According to Blackstone,[2] an idiot is "one who hath had no understanding from his nativity, and therefore is by law presumed never likely to attain any"; "he is not an idiot if he hath any glimmering of reason, so that he can tell his parents, his age, or the like common matters." A lunatic, on the other hand, is "one who hath had understanding, but by disease, grief, or other accident hath lost the use of his reason." It would appear from Fleta[3] that at one time certain persons called *tutores* used to have the custody of the lands *idiotarum et stultorum*. Probably these *tutores* were the lords of whom the lands were held. But in any event the trust is said to have been abused, and accordingly an Act, now lost, was passed in the reign of Edward I. giving to the King the custody of the persons and inheritances *idiotarum et stultorum*, being such *a nativitate*, with a reservation to the lord of all the lawful feudal claims.[2] In confirmation of this Act it was declared by the statute *de Praerogativâ Regis* in the succeeding reign (17 Edw. II. c. 9) that "the King should have the custody of the lands of natural fools, taking the profits of them without waste or destruction, and shall find them their necessaries, of whose fee soever the lands be holden, and that after the death of such idiots he shall render them to the right heirs, so that by such idiots no alienation shall be made, nor shall their heirs be disinherited."

Statute *de Praerogativâ Regis*, 17 Edw. II. cc. 9, 10.

Lunatics.

From Fleta's language (*sup.*) it would seem that in his time there was no provision for the protection of the persons and estates of lunatics similar to that provided for idiots. But the statute *de Praerogativâ Regis* remedied this defect. It enacted as follows:[4] "The King shall provide when any (that beforetime hath had his wit and memory) happen to fail of his wit (as there are many having lucid intervals) that their lands and tenements shall be safely kept without waste and destruction, and that they and their household shall live and be maintained competently from the issues of the same, and the residue

Statute *de Praerogativâ Regis*.

[1] As to history of lunacy administration, see note to sec. 1, *ante*.

[2] See 2 Inst. 14, 4 Rep. 125 (*b*). According to other authorities the royal custody of idiots and lunatics was a prerogative right, or a duty—*regium munus*—which the King owed his subjects in return for their obedience. Cp. Staundf. de Pr. Reg. 33; 2 Inst. 14, 4 Rep. 126; Bacon's Abr. tit. "Idiots and Lunatics" (C); Dyer 25; 1 Bl. Comm. 303.

[3] Fleta, p. 6; and see Reeves' *History of English Law*, vol. i. p. 307.

[4] 17 Edw. II. c. 10.

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beyond their reasonable sustentation shall be kept to their use, to be delivered unto them when they recover their right mind, so that such lands and tenements shall in nowise within the time aforesaid be aliened, nor shall the King take anything to his own use. And if the party die in such estate, then the residue shall be distributed for his soul by the advice of the ordinary."[1]

It will be observed that, under the provisions of this statute, while the King had an interest and personal benefit in the lands of an idiot, and was entitled to take the profits of his estate to his own use, merely allowing necessaries to him, and restoring the lands to his heirs after his death, in the case of the lunatic he was a mere trustee.[2] This distinction was not, however, of such permanent importance as might have been imagined; for the King's rights did not arise either in the one case or in the other till a man had been found idiot or lunatic, and the juries by whom this issue was determined generally returned verdicts of *non compos mentis* only. Moreover, it is said[3] that after the Revolution the Crown always granted the surplus profits of the estate of an idiot to some of his own family.

The Court of Wards Act (32 Hen. VIII. c. 46).

On the erection of the Court of Wards, the persons and lands of "idiots and natural fools" were placed under the management of the Master of this Court. In the reign of Charles II., however, the Court of Wards was abolished,[4] and the care and custody of such persons and their estates reverted to the Crown. Before the establishment of the Court of Wards, the royal prerogative both as to idiots and as to lunatics was exercised through the Court of Chancery. While the Court of Wards existed, all commissions respecting them were taken out of Chancery and returned there; and after the abolition of the Court of Wards, the royal prerogative in regard to lunacy was again exercised through Chancery by the Lord Chancellor.[5] It was not, however, as the Court of Chancery that the Lord Chancellor acted in such cases, but as the representative and delegate of the Crown.[6] The theory of the law on this subject was tolerably clear and simple. When a person was found idiot or lunatic, the Sovereign alone had power to grant the custody of him and his estate by sign manual, and therefore, to save repeated applications to the Crown, the power in question was delegated by warrant under the sign manual, countersigned by two Secretaries of State, to the Lord Chancellor[6] on his coming into office. It was from this warrant, and not from his position as Chancellor, that his power of issuing commissions and making grants of custody was derived. But after the custody

[1] Under the statutes 31 Edw. III. c. 11, and 22 & 23 Car. II. c. 10, this would certainly be taken to be a direction to preserve the residue for those entitled to the benefit of the lunatic's estate on his death.

[2] The King took, however, even in the case of a lunatic's property, a right which was not in itself profitable, as the presentation to a church. Com. Dig. Idiot (C.)

[3] Ridg. 1 Parl. Cas. 520.

[4] 12 Car. II. c. 24.

[5] *Corporation of Burford* v. *Lenthall*, 1743, 2 Atk. 553. Cp. *ex parte Phillips*, 1812, 19 Ves. 122, per Lord Eldon, L.C.

[6] The royal prerogative in regard to lunatics might be delegated to other great Officers of State, 4 Bro. C.C. 233. An instance is recorded of the warrant having been given to the Lord High Treasurer, 2 Dick. 553.

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was granted, the Keeper of the Great Seal acted in matters relative to the lunatic not under the sign manual, but by virtue of his general power as Keeper of the King's Conscience; and the orders of the Court of Chancery in matters of lunacy were enforced by attachment, not as being warranted by the sign manual, but by the general power of the Court.[1]

Idiocy or lunacy how found.

Writ.

The question whether a person was idiot or lunatic was determined either by writ or by commission. The former procedure, which was the more ancient, consisted in the issue of a writ[2] to the sheriff or escheator of the county where the alleged idiot or lunatic resided, to try by a jury and personal examination of the party whether he was idiot or lunatic or not. The writ was issued by the Lord Chancellor on a petition suggesting idiocy or lunacy, and verified by affidavits of facts, and was returnable into the Court of Chancery, and any person found idiot or lunatic in this way had a right of appeal to the Court of Chancery or the King in Council.

Commissions.

In the course of time the second mode of inquiry above referred to superseded the first. Commissions[3] were issued by letters patent under the Great Seal [from the common law side of the Court of Chancery,[4] directed to five persons as Commissioners, who, or any three or more of them, were to inquire, upon the oaths of good and lawful men of the county, whether the party named in the Commission was idiot or lunatic or not, and as to the extent or value of his property. The Commissioners held their inquiry generally in or near the place of abode of the supposed idiot or lunatic; the inquisition, which was required to be made by indenture, and sealed with the seals of twelve jurymen, was returned into Chancery, with the commission, within a month after it was taken; and thereafter, if the verdict was one of idiocy or lunacy, the Lord Chancellor referred to one of the ordinary Masters in Chancery the matter of the lunacy, and in particular the duty of ascertaining and reporting upon the

[1] Per Lord Apsley, L.C., in *ex parte Grimstone*, 1772, 2 Ambl. 707; and see 2 Sch. & Lef. 438, and 6 Ves. 783.

[2] The forms of these words were various. (*a*) One suggested that the party "Fatuus et idiota existit; ita quod regimini sui ipsius, terrarum, tenementorum, bonorum et catallorum suorum non sufficit," and directed an inquiry, "si A. fatuus et idiota sit, sicut praedictum est, necne; et si sit, tunc utrum a nativitate suâ aut ab alio tempore; et si ab alio tempore, tunc a quo tempore; qualiter et quomodo; et si lucidis gaudeat intervallis, et quis propinquior haeres ejus est et cujus aetatis." (*b*) Another form, suggesting that "A. idiota et adeo impotens ac mentis suae non compos existit, quod regimini sui ipsius, terrarum, vel aliorum bonorum, non sufficit," directed the inquiry, "si idiota sit et mentis suae non compos, sicut praedictum est, necne." (*c*) In a third form the inquiry is whether "a nativitatis suae tempore semper hactenus purus idiota extiterit, an per infortunium vel alio modo in hujusmodi infirmitatem postea inciderit tunc per quod infortunium et qualiter et quomodo et cujus aetatis fuerit." It is noteworthy that the form of this writ is inconsistent with the legal definition of idiocy given above, *sup.* Cp. *ex parte Cranmer*, 1806, 12 Ves. 450, note 11. (*d*) By another form the sheriff is directed to inquire whether "a primaevâ aetate suâ fatuus extiterit." These writs (*a*), (*b*), (*c*), (*d*) are given in Fitz. N.B. 581, ed. 1652; vol. ii. 232, ed. 1794. (*e*) In the writ entitled "de idiota coram consilio" (Reg. Brev. 266), the description is "idiota est et non sanae mentis existit."

[3] See form of General Commission in Elmer, Appendix, No. 18.

[4] 4 Inst. 80, 81.

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property and next-of-kin or heir-at-law of the person so found by inquisition — questions which although included in the commission were not, in later practice at any rate, investigated by the Commissioners or their jury.[1]

Jurisdiction in Lunacy. Act of 1833.

The procedure above described, by which writs *de lunatico inquirendo* were addressed to three or more Commissioners, had been found cumbrous and expensive, and accordingly an Act was passed in 1833 (3 & 4 Will. IV. c. 36) "to diminish the inconvenience and expense of commissions in the nature of writs *de lunatico inquirendo*, and to provide for the better care and treatment of idiots, lunatics, and persons of unsound mind, found such by inquisition."

Writs to a single Commissioner.

This Act empowered the Lord Chancellor to cause any Commission in the nature of a writ *de lunatico inquirendo* to be addressed to any one or more person or persons, who should make inquisition thereon and return the same into the High Court of Chancery, and who for that purpose should have the same powers theretofore possessed by the three or more Commissioners above mentioned (sec. 1).

Chancery Visitors.

The Act also established a Board of three Visitors—two physicians, and one a barrister of not less than five years' standing—to superintend, inspect, and report to the Lord Chancellor upon the care and treatment of every idiot, lunatic, or person of unsound mind so found, and to make all necessary orders and regulations as to the duties of such Visitors as the Lord Chancellor should think fit. The Visitors were to hold office during pleasure, and were to receive salaries not exceeding £500 in the case of a medical, and £300 in the case of a legal, Visitor, exclusive of expenses.[2] Each lunatic, idiot, or person of unsound mind was to be visited at least (sec. 2) once a year by one of the medical Visitors (sec. 3).[3] In order to cover the expenses of working the Act of 1833 a small percentage (1 per cent per annum upon the clear annual income of each lunatic) was, by a general order made under the Act, directed to be paid to the committees—the members of the family of each lunatic so found, and the persons appointed by the Court to take charge of the lunatics and their estates—or other persons in receipt of such lunatic's income (sec. 8).

Percentages on incomes of lunatics.

Act of 1842.

In 1842 the practice in regard to Chancery lunatics was again altered by the legislature. By the statute 5 & 6 Vict. c. 84 the Lord Chancellor was enabled to appoint two fit persons, serjeants or barristers-at-law of not less than ten years' standing, to be called "the Commissioners in Lunacy," and to whom, or one of them, all commissions in the nature of writs *de lunatico inquirendo* were there-

"The Commissioners in Lunacy."

[1] A party might also be found insane (*a*) on the report of a Master in Chancery to whom the Lord Chancellor referred the question whether a trustee alleged to be lunatic was so or not, 11 Geo. IV., and 1 Will. IV. c. 60, amended by 25 & 26 Vict. c. 86; Shelford, p. 94; (*b*) by justices, under 9 Geo. IV. c. 40, s. 38; (*c*) on the trial of an issue in Chancery; (*d*) on the levying of fines or recoveries.

[2] Each of the Chancery Visitors now receives a salary of £1500 a year, exclusive of expenses; see notes to sec. 163 subs. (4), *post*.

[3] There appear to have been about 400 Chancery lunatics at the time of the passing of this Act.

after to be addressed (sec. 1). These Commissioners were to hold office during good behaviour (sec. 1), were to receive salaries of £2000 a year each (sec. 13),[1] exclusive of expenses (sec. 14), and were to be *ex officio* members of the Board of Visitors, and the Lord Chancellor was empowered to direct them to perform all the duties then usually referred to the Masters in Chancery in relation to lunatics and their affairs (sec. 3).

Act of 1845.

The next statute to which it is necessary to refer is the 8 & 9 Vict. c. 100, which established a permanent Board of Lunacy. Under this statute the name of "Masters in Lunacy" was substituted for "the Commissioners in Lunacy" (sec. 2), a title thenceforward used to designate the members of the permanent Lunacy Board, which the Act created (sec. 3), and the Lord Chancellor was enabled to direct the Masters in Lunacy to report as to lunacy in certain cases, to appoint guardians of the person and receivers of the estate, and to direct the application of the income of such lunatics (sec. 95).

Procedure under Acts of 1842 and 1845.

The procedure on inquisitions under the Acts of 1842 and 1845 was substantially as follows. The petition for a commission, duly supported by medical and other affidavits, was lodged with the Secretary of Lunatics[2] for the Lord Chancellor's inspection. If satisfactory and unopposed, the petition was endorsed and the commission issued. If a *caveat* was entered, liberty was given to attend and oppose it, and the inquiry was held in the most convenient place. A jury of twenty-four persons was summoned by the sheriff on the instructions of the Master in Lunacy to try the case. The jury and the Master being assembled, and the former sworn, the Master in Lunacy explained to the jury what they had to try. After witnesses and counsel were heard, and the alleged lunatic had been examined, the Master summed up, and the verdict—which was required to be that of twelve jurors at least—was given. Then the inquisition was filled up and signed by the twelve jurymen, and the Master annexed a duplicate copy to the commission, and endorsed on the commission the words: "The execution of this commission appears by the inquisition hereunto annexed." The chief defect of this legislation was its requisition of a jury in all cases.

Act to improve administration of justice in Chancery, 1851.

In 1851 an Act was passed (14 & 15 Vict. c. 83) providing for the appointment of two Lords Justices in Chancery to hear appeals from the Master of the Rolls and the Vice-Chancellors. The powers of the Lord Chancellor under the sign manual in relation to idiots and lunatics, were expressly excepted (sec. 13) from the powers transferred to the Lords Justices.

Act for the relief of suitors in Chancery, 1852.

But this exception was removed in the following year by sec. 15 of 15 & 16 Vict. c. 87, by which all the statutory jurisdiction of the

[1] £2000 a year is still the salary of "the Masters in Lunacy"—a title which was substituted for that of "the Commissioners in Lunacy" by 8 & 9 Vict. c. 100, s. 2.

[2] The office of Secretary of Lunatics was one of great antiquity; he was servant to the Lord Chancellor for the time being, was appointed by parole only, took no oath of office, and was removable at pleasure.

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Lord Chancellor in relation to idiots and lunatics might be exercised by the Lords Justices.

The Lunacy Regulation Act 1853.

In 1853, the year in which, as we have seen,[1] the law as to the care and treatment of the insane was so beneficially altered, the procedure on inquisitions also was amended by the Lunacy Regulation Act of 16 & 17 Vict. c. 70.[2]

Under the Act of 1853 the first step towards obtaining an inquisition was the presentation of a petition to the Lord Chancellor by any relative, and in special cases by a stranger, supported by medical and other evidence, along with an affidavit of notice having been given to the alleged lunatic calling attention to his right to demand a jury, and informing him that he must do so within seven days after the date of that notice. If the alleged lunatic demanded a jury, the demand was granted as a matter of right. If, on the other hand, he did not demand a jury, and no notice of opposition was given, the Lord Chancellor or the Lords Justices directed an inquiry before a Master without a jury. If a petition was opposed, but no demand for a jury was made, the petition was set down for hearing in open Court, and the Court then made an order upon it, either dismissing it or directing an inquiry before or without a jury. Moreover, the Masters had power under the 43rd section of the Act to certify to the Lord Chancellor, "upon consideration of the evidence before them," that in their opinion an inquiry before a jury was expedient, and thereafter to summon a jury forthwith without further order. Before calling in a jury by this means, they were obliged, however, to go *through the whole case*, so as to comply with the condition "upon consideration of the evidence before them."[3] In all cases the lunatic was personally examined.[4] On the completion of the commission, if it ended in a verdict of lunacy, the Master inquired into, and reported to the Lord Chancellor upon, the committees of the person and estate whom the family proposed to appoint, the amount of the property, etc. Lunatics so found in this way then became subject to annual visitation by the Chancery Visitors. This Act also provided (sec. 2) that when and so long as the Lords Justices were entrusted under the sign manual, etc., all the powers, etc., of the Lord Chancellor in relation to idiots and lunatics might be exercised by the Lord Chancellor acting either alone or jointly with both or either of the Lords Justices, or by the Lords Justices acting jointly apart from him. It may be convenient to finish this part of our subject at once.

Jurisdiction of Lords Justices.

Court of Chancery Officers Act 1867.

Under the Court of Chancery Officers Act 1867 (30 & 31 Vict.

[1] See notes to sec. 1, *ante*.

[2] A full account of the procedure under this statute will be found in the evidence of Master Barlow before the Select Committee of 1859-60, pp. 101-129, of which copious use has here been made.

[3] Cp. Committee of 1859, Master Barlow's evidence, Ans. 993-997.

[4] Master Barlow (*ubi sup.* Ans. 970) mentions one case in which he failed to see an alleged lunatic because she had shut herself up in a room, and he and her solicitor were informed that if they broke through the door there was considerable risk of her jumping out of the window.

c. 87, sec. 13) all the jurisdiction of the Lords Justices under the Act of 1853, or any other Act, might be exercised by them not only jointly but separately. Sec. 108 (1).

Section 17, subs. (3) of the Judicature Act 1873 provided that the jurisdiction in lunacy of the Lord Chancellor and the Lords Justices of Appeal in Chancery should not be transferred to the High Court; while sec. 18, subs. (5) transferred to the Court of Appeal all jurisdiction vested in or capable of being exercised by Her Majesty in Council upon appeal from any order in lunacy made by the Lord Chancellor, or any other person having jurisdiction in lunacy. Under the 51st section the Lord Chancellor may by letter request the Judges of the Court of Appeal sitting in lunacy to act as additional Judges of the Chancery Division. On 10th November 1875 the following letter was addressed by the Lord Chancellor to each of the Lords Justices so sitting: "As it is convenient that orders should continue to be made as heretofore in Chancery as well as in lunacy, I have to request you to act as an additional Judge of the Chancery Division of the High Court of Justice for the purpose of making such orders." This letter relates to all orders required to be made in Chancery as well as in lunacy.[1] But this jurisdiction can only be exercised in aid of the jurisdiction in lunacy.[2] The Judicature Acts. Act of 1873.

Section 7 of the Judicature Act of 1875 provided that the jurisdiction in lunacy of the Lords Justices of Appeal in Chancery should be exercised by such Judge or Judges of the High Court of Justice as may be entrusted by the sign manual of Her Majesty and her successors with the care and commitment of the custody of the persons and estates of lunatics. Act of 1875.

As to appeals against orders in lunacy see notes to sec. 109, *post.*

The principal changes introduced by the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86) were these: The Lord Chancellor in ordering, under the Act of 1853, an inquiry before a jury, might direct the trial to take place in one of the superior Courts at Westminster, the verdict having the same force as an inquisition under a commission of lunacy returned into the Court of Chancery. Again, in an inquiry before a Master, it was to be lawful for the alleged lunatic, upon the hearing of any petition, to demand an inquiry by a jury, the demand having the same effect as if made by notice filed with the Registrar, as theretofore. The inquiry was to be confined to the question whether the subject of the inquiry was at the date thereof of unsound mind, and incapable of managing himself or his affairs; no evidence as to anything said or done by such person, or as to his demeanour or state of mind at any time more than two years before, being receivable in evidence as a proof of insanity, unless the Judge or Master should direct otherwise.[3] The Lord Chancellor was enabled, without inquisition, to apply the property of a lunatic, of which the *corpus* did not exceed £1000 in value or Lunacy Regulation Act 1862.

[1] *Re Platt*, 1887, 36 Ch.D. 410; 36.

[2] *Re Barber*, 1888, 39 Ch.D., at p. 188.

[3] This provision was the direct result of the scandalous waste of time in the *Windham* inquiry, see *ante* p. 292.

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the income £50 a year, for his benefit, and also to apply for their benefit the property of persons acquitted on the ground of insanity. Chancery lunatics were to be visited four times a year by one of the Visitors, at intervals not exceeding four months, with the exception of those in public or private asylums or hospitals, who need not be visited more than once a year; and provision was made for (*a*) reports by the Visitors to the Lord Chancellor every six months as to the number of visits made, patients seen, and miles travelled; (*b*) an annual report to Parliament, with a return of sums received for travelling and other expenses, and the appointment of two medical Visitors and one legal, with a salary of £1500 a year each, and a superannuation allowance.

Lunacy Regulation Amendment Act 1882.

By the Lunacy Regulation Amendment Act 1882 (45 & 46 Vict. c. 82), the power of the Lord Chancellor under the Lunacy Regulation Act of 1862 (sec. 12) to deal with small properties summarily without inquisition was extended to cases where the *corpus* and income of the property amounted respectively to £2000 and £100 a year, instead of £1000 and £50 a year as theretofore (sec. 3). It was also provided (sec. 4) that all Chancery lunatics were to be visited twice a year, at intervals not exceeding eight months (instead of, as under section 20 of the Act of 1862, four times a year at intervals not exceeding four months), but every lunatic resident in a private house was, during the two years next following inquisition, to be visited at least four times in every year.

The present position of the jurisdiction in lunacy is explained in the notes to this section.

The Lord Chancellor.—See definition of in sec. 12 of the Interpretation Act 1889 (52 & 53 Vict. c. 63), cited *ante* p. 198.

Or jointly, etc.—The Lords Justices in Lunacy act as additional Judges of the Chancery Division in accordance with a request by the Lord Chancellor in letter dated 10th November 1875, and set out in *re Platt*.[1] This letter applies to all applications in lunacy which require also an exercise of the jurisdiction of the Chancery Division.[2]

Act of 1891, s. 27, subs. (1). Procedure as to Chancery lunatics.

27. (1) Subject to rules in lunacy, the jurisdiction of the Judge in Lunacy as regards administration and management may be exercised by the Masters, and every order of a Master in that behalf shall take effect unless annulled or varied by the Judge in Lunacy.

Administration and management.

Under this section the Master has jurisdiction to authorise an action being brought on a lunatic's behalf, subject to his order being set aside by the Judge. In *re Hinchcliffe*, No. (2)[3] application was made to the Court to disallow the payment out of a lunatic's estate of the costs of an action brought on the lunatic's behalf in respect of alleged breaches of trust. The proceedings were authorised by

[1] 1887, 36 Ch.D., at p. 411. [2] S.C. *ubi sup.* p. 410. [3] 1895, W.N. 147.

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orders made by a Master in Lunacy, but the charges of breach of trust were ultimately withdrawn, and the plaintiffs were ordered to pay the costs of the action. The applicants raised the question whether the Master had jurisdiction to authorise the proceedings without any confirmation of his order by the Judge in Lunacy. Their Lordships held that, under section 27 of the Lunacy Act 1891, the Master had jurisdiction to authorise the action, subject to his order being set aside by the Judge.

(Proceedings between return of inquisition and appointment of committees. Inquiries by Master.)

(2) The Judge in Lunacy may make orders for the custody of lunatics so found by inquisition and the management of their estates, and every such order shall take effect as to the custody of the person immediately, and as to the custody of the estate upon the Master's certificate of completion of the committee's security.

This subsection re-enacts sec. 63 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), by which the necessity of a grant of custody under the Great Seal was abolished.[1]

The proceedings between the return of an inquisition finding a person lunatic and the appointment of committees by the Judge in Lunacy under this subsection may most conveniently be treated here.

Immediately after inquisition found, the party having the conduct of the proceedings[2] takes out a summons[3] to inquire into the following matters: (*a*) the lunatic's age, position in life, and residence; (*b*) the nature of his lunacy; (*c*) who are his next of kin and heir-at-law; (*d*) who ought to be appointed committee of his person and of his estate (the names of the proposed committees are inserted in the summons); (*e*) of what his property consists, and the particulars thereof; (*f*) the amount of his income; (*g*) in what manner, and at what expense, and by whom, and where he has been maintained;

See form of such grants in appendix to Shelf. Lun. pp. 849, 851. The commission in lunacy formerly contained a direction to inquire "who is next heir," in order that the Crown might know to whom the property was to be delivered when the necessity for its superintending care had ceased (*re Fitzgerald*, 1805, 2 Sch. & Lef., per Lord Redesdale, at p. 440). But at least since the beginning of the present century it had ceased to be the practice in England to make particular inquiry before the Commissioners and jury respecting the heir-at-law or the property of the lunatic; the jury generally returned their ignorance of those facts, as well as of the lands which the lunatic had aliened, and these matters—with the question who were the next of kin—were subsequently ascertained and reported by the Master to whom the matter of the lunacy was referred after the inquisition had been returned (cp. Shelf. Lun. edit. 1833, p. 84). In the modern form of inquisition (*v. post*, Appendix) no direction to inquire as to next of kin, etc., is given.

[2] See *ante* p. 272.

[3] See form of, Form 13, Rules in Lunacy, 1892, *post*. The statutory form of summons is, however, departed from in practice. The form used in practice will be found in the Appendix, *post*.

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what should be allowed for his past maintenance; what, if anything, is due, and to whom, in respect thereof; and to whom and out of what fund the same ought to be paid; (*h*) what should be allowed for future maintenance, when the allowance ought to commence, and out of what fund it should be paid (r. 31, Rules in Lunacy 1892, *post*). (The sums proposed for past and future maintenance are inserted in the summons).

Summons, preparation of.

The summons is prepared by the party and sealed by one of the clerks in the Masters' Office, and a copy of it is left at the Masters' Chambers by the party taking it out (r. 93, *post*).

Service of.

The summons is to be served at least two clear days before it is returnable, unless the Master direct it to be returnable within a shorter time after service (r. 94, *post*).[1] The summons should be addressed to all the persons on whom it is intended to be served (*ib.*). It should of course be served on the next of kin, and on the Attorney-General where there are no next of kin.[2]

Evidence in support of.

The summons should be supported by evidence as to the points into which the Master is to inquire (see *sup.*). As a matter of practice, it was formerly deemed convenient that this evidence should be collected by the solicitor having the conduct of the proceedings before the inquisition is held, in order that if the party was found lunatic, the Master might institute the inquiries directed by the rules, while all the witnesses were at hand, whenever the return to the inquisition had been prepared.[3] The Master was consulted with reference to this matter when the petition for an inquisition was presented, and short service of the summons would probably be allowed. The proceedings subsequent to the inquisition are now invariably conducted in chambers.

How evidence may be taken.

The evidence may be taken either orally or by affidavit, as the Master directs (r. 85, *post*).[4] In the latter case the affidavits should be entitled

"In Lunacy

In the matter of A. B. a person of unsound mind"

or

"In the matter of A. B. a lunatic."

See Form 1 (*b*) Schedule to Rules in Lunacy, 1892, *post*.

[1] See further as to service of, and proceedings on, summonses, rr. 95-99, *post*.

[2] *Re Early*, 1837, 2 Coop. *t.* C. 107; *ex parte Watson*, 1821, Jac. 161. Although the lunatic is resident, and has property, in Lancashire, the Attorney-General of the Duchy of Lancaster ought not to be served with the summons. Whether the Queen is entitled in such a case to attend the proceedings under the prerogative of the Crown or as Duchess of Lancaster, the Queen's Attorney-General sufficiently represents her rights (*re Kershaw*, 1882, 21 Ch.D. 613). The attendance of the Attorney-General of the Duchy would cause additional expense and involve inquiries as to domicile and title (*ib.*, *ubi sup.*, at p. 614), whereas the principle which leads the Court to call for the next of kin and heir-at-law of the lunatic, is not to try their title but to receive from the persons probably entitled that assistance which they will be likely to afford (*ex parte Clarke*, 1820-22, Jac. 589, per Lord Eldon, L.C.).

[3] Elmer, p. 32.

[4] And see further as to evidence and affidavits, rr. 85-91, *post*.

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As this form relates to persons *found lunatic*, the affidavits should not be sworn till the verdict has been returned.[1]

The points to which the inquiry, which is not now commenced immediately after the close of the inquisition but is held in the Masters' Office, and, so far as convenient, before the same Master who executed the commission (r. 15, *post*),[2] is to be directed must now be considered *seriatim*.

(*a*) Lunatic's age, etc.

(*a*) *The lunatic's age, position in life, and residence.*—The evidence on these matters presents no difficulty.

(*b*) Nature of lunacy.

(*b*) *The nature of his lunacy.*—The same observation applies to this head.

(*c*) Next of kin and heir-at-law.

(*c*) *Who are his next of kin and heir-at-law.*—The position of the next of kin and the heir-at-law in proceedings prior to the return to the inquisition is considered *ante* pp. 263, 272; as to their position in regard to the appointment of committees, see *post* p. 339.

Under the Rules in Lunacy 1892—

Inquiry as to not held while order of exemption from fees continues.

(1) Where an order is made exempting the property of a lunatic from payment of fees (see sec. 148, subs. (4), *post*), the Master shall not, during the continuance of the exemption, inquire respecting his next of kin and heir-at-law, unless he thinks it expedient (r. 36, *post*).

Deferred or carried on to limited extent.

(2) The Master may, in any case, defer an inquiry respecting next of kin and heir-at-law, or carry on the inquiry to such limited extent only and under such restrictions as he thinks expedient, and may direct that persons claiming to be next of kin or heir-at-law be left to make out their claim at their own expense, and may in any case, if he think it expedient, wholly dispense with the inquiry (r. 37, *post*).[3]

Attendance of heir-at-law or next of kin disallowed.

(3) The Master may dispense with and disallow the attendance on the proceedings of the heir-at-law,[4] or of all or any of the next of kin, either wholly or except at their own expense, or except upon special leave first obtained, and such notice only of attending the proceedings shall be given as the Master shall direct (r. 39, *post*).

Subject to these provisions, inquiry as to held.

Subject to these provisions, the Master is required once, in the matter of each lunatic so found, to determine, and may determine as often as he thinks it expedient, which, if any, of the next of kin, and what other persons, if any, are to attend the proceedings, or any particular proceeding, and only those persons, if any, to whom the Master has given leave to attend are entitled to notice of, or are allowed to attend on any proceeding at the cost of the estate, except by special leave first obtained (r. 40, *post*).

Origin of inquiry.

These rules are, historically, the result of the operation of two distinct ideas. The first of these in point both of time and of

[1] Cp. Elmer, p. 36.

[2] Although the matter of the lunacy is referred to the Masters jointly and severally, anything to be done by or before the Masters may be done by or before them or either of them (r. 15, *post*).

[3] This rule combines rr. 35 and 36 of the Rules in Lunacy 1890.

[4] Under the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), sec. 81, the heir-at-law had a right to notice of and to attend on the account of the committee of the estate.

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(1) Benefit of lunatic primarily considered.

importance was, and is, that in administering the estate of a lunatic, the Court has primarily only the benefit of the lunatic himself to consider. At one time it was thought that in order to give effect to this principle, the lunatic's next of kin, while they were entitled to notice to attend before the Master on the passing of the accounts, ought never to be allowed to do so at the cost of the estate, unless some special case were laid before the Court, as that they had been at expense on some extraordinary litigation as to the account.[1] Gradually, however, the Courts came to recognise that it might be for the advantage of the lunatic that the costs in question should be incurred, subject, of course, to proper limitations, as the next of kin were the persons most likely to be able to give information to the Court respecting the situation of the property, and were concerned in its good administration,[2] and thus the expense of the attendance was repaid by the economy which the attendance enforced.[3] This concession proceeded almost exclusively, however, on the ground of the interests of the lunatic himself.

Advantage of attendance to lunatic's estate.

(2) Presumption against interference with expectations.

But in course of time a second idea, which had never been quite lost sight of,[4] began to make its influence felt more strongly, viz. the broad general principle that where property is taken compulsorily from any person who is not *sui juris*, the presumption is, if the words of the Act of Parliament really admit of that interpretation, that the Legislature did not intend to interfere with any legal rights or any legitimate expectation of any persons whatsoever.[5] It came to be perceived that the statute *de Praerogativâ Regis*, under which the Crown was merely administrator of the lunatic's estate, was peculiarly one to which this rule applied, and that, consequently, while the interest of the lunatic was the primary and paramount consideration, rights of succession were also entitled to be regarded.[6] The modern rules of

Modern rules hold balance between two views.

[1] *Ex parte Wright*, 1750, 2 Ves. sen. 24; and cp. *Dormer's case*, 1724, 2 P.W. 262, 264, cited also in *Owen* v. *Davies*, 1747, Ves. supp. p. 61; *ex parte Chumley*, 1791, 1 Ves. jun. 296; *Oxenden* v. *Lord Compton*, 1793, 2 Ves. jun., at p. 17; *ex parte Baker*, 1802, 6 Ves. 8.

[2] *Ex parte Whitbread*, 1816, 2 Mer., at p. 101, per Lord Eldon, L.C.

[3] *Re Amoy*, 1807, per Lord Eldon, L.C., 2 Coop. *t.* C., at p. 106; and *re Meux*, *ib.*, where Lord Eldon said that an order which might deter the heir-at-law and next of kin from attending when the proposals for committees of the person and estate were carried in, should be carefully avoided. Cp. *re Cranmer*, 1808, *ib.* 107, where Lord Eldon pointed out that the attendance of the next of kin was a check upon the heir-at-law, who, if committee of the estate, was often disposed to apply the personal estate in the improvement of the real. And *re Howell*, 1829, *ib.*, per Lord Lyndhurst, L.C. The rule laid down in these decisions was at length embodied in a general order (15th G.O. in Lunacy, 27th Oct. 1842), which is substantially identical with r. 40 of the Rules in Lunacy 1892, Beav. Ord. 231, and 2 Coop. *t.* C. 106 n. (*a*). Cp. also *ex parte Bromfield*, 1792, 1 Ves. jun. 453; *Tullit* v. *Tullit*, 1758, Ambl. 370; *ex parte Grimstone*, 1772, *ib.* 706; *ex parte Annandale*, 1749, Ambl. 80; *Sergeson* v. *Sealey*, 1742, 2 Atk. 412.

[4] Cp. *ex parte Annandale*, *ubi sup.*, per Lord Hardwicke, L.C., "In cases of lunacy the first care of the Court is the maintenance of the lunatic, and after that it is a rule never departed from, not to vary or change the property of the lunatic so as to effect any alteration as to the succession of it."

[5] Per James, L.J., in *re Barker*, 1881, 17 Ch.D., at p. 243, and cp. *re Ryder*, 1882, 20 Ch.D. 514.

[6] Cp. *A.-G.* v. *Marquis of Ailesbury*, 1887, 12 App. Cas., per Lord Macnaghten, at p. 688.

practice with reference to attendance of, and inquiries as to, next of kin endeavour to hold the balance between the two—in some measure conflicting—ideas whose growth has now been traced.

Master determines proof of relationship.

It is for the Master to determine how the relationship between the parties is to be proved. In simple cases an affidavit by an independent member of the family or friend may be sufficient;[1] in others, less simple, the production of certificates of birth and marriage may be required;[2] and if any difficulty arises, the Master's directions should be obtained before expense is incurred.[3]

Decision not conclusive.

The Master's decision as to the next of kin and heir-at-law is, of course, not conclusive; but *primâ facie* the person found to be heir-at-law is to be taken to be so,[4] and on the death of the lunatic,[5] in cases where there is no dispute as to the heirship, possession of the estate will be delivered to him.[6]

As to power of Master (1) to appoint guardian of infant next of kin, see r. 41, Rules in Lunacy 1892, *post*, and note *re Brown*;[7] (2) to consolidate matters and to use evidence in other matters, see r. 42, *post*; (3) to determine what solicitors are to represent third parties, r. 43, *post*.

The term "next of kin" includes "heir-at-law," and the persons entitled under the statute for the distribution of the estates of intestates (sec. 341, *post*). It includes therefore the husband or wife of the lunatic.

Attendance of next of kin and heir-at-law important with reference to appointment of committees. Costs of attendance.

The attendance of the next of kin and heir-at-law is further considered of importance because of their claims to be appointed committees, and if they do not appear or are not represented, the Master will generally postpone the consideration of the question of the committeeship.[8] In general the costs of only one attendance for the next of kin and one for the heir-at-law at the passing of the accounts are allowed.[9] But any of the next of kin may attend at their own expense, and direct that notice of all proceedings shall be served upon them.[10]

Assignees of next of kin.

The assignees of the next of kin of a lunatic do not receive the consideration given to their predecessors in interest. Thus the Court will not make an order in the nature of a stop-order on the estate of a lunatic in favour of an assignee of the next of kin,[11] nor where the next of kin of a lunatic has become bankrupt, is it necessary to serve the assignees with a petition for an increased allowance for the lunatic.[12]

Legatees.

Legatees under the will of a lunatic will not be allowed to attend

[1] Cp. Elmer, p. 238; and as to power of Master to dispense with strict proof of pedigree, see r. 38, *post*.

[2] Shelf. Lun., edit. 1833, 625.

[3] Elmer, 6th edit. p. 152.

[4] *Re Fitzgerald*, 1805, 2 Sch. & Lef. 439, and cp. *ex parte Clarke*, 1822, Jac., at p. 595.

[5] See Appx. R.L. 1892, r. 46, *post*.

[6] *Re Ferrior*, 1867, 3 Ch., per Sir John Rolt, L.J., at pp. 178, 181.

[7] *Re Brown*, 1849, 1 Mac. & G. 201.

[8] Cp. Elmer, 6th edit. p. 27; and r. 37, *post*.

[9] Cp. Elmer, 6th edit. p. 30.

[10] *Ib.*, and see r. 37, *post*.

[11] Per James and Mellish, L.JJ., in *re Wilkinson*, 1874, 10 Ch. 73, overruling *re Alchin*, 1825, cit. 1 Mac. & G. 103 n. (*a*); *re Aubery*, 1836, *ib.*; *re Moore*, 1849, *ib.*; and *re Pigott*, 1851, 3 Mac. & G. 268.

[12] *Ex parte Chambers*, 1835, 4 L.J., N.S., Ch. 175.

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proceedings in lunacy—*semble*, at the cost of the estate—even if it is alleged that they have a greater interest in the matter than the next of kin.[1]

(*d*) Committees. Proposals for appointment of. Notice of.

(*d*) *Who ought to be appointed committee of his person and of his estate.*—No order is requisite to enable any of the next of kin to carry in proposals for committees of the person and estate of the lunatic, or to entitle the next of kin to notice of proposals carried in by the party prosecuting the commission, or any one else. In an old case it was said that where from any peculiar circumstances such an order was requisite, the case probably would very rarely occur in which it would not be made.[2] It was suggested in argument in *re Webb*[3]—and the suggestion met with a qualified acceptance by Lord Cottenham—that the natural daughter of a lunatic who was the sole residuary legatee under his will, but not interested in the real estate of the lunatic, although she must be allowed to attend proceedings in the lunacy, could not "actively interfere in the management of the estate,"[4] or "take in any proposals."[5] The reports of this case[3] are, however, conflicting, and it is not clear that Lord Cottenham intended to lay down any general rule on the subject;[6] and it is improbable that any distinction of the kind in question would now be recognised.

re Webb.

Committeeships of person and estate compared. May be held by same person. Now usually distinct. Joint committees.

Committees generally.—Committees in England and Ireland[7] correspond to the tutors and curators of the civil law.[8] There is a com-

[1] *Re Scarlett*, 1873, 8 Ch. 739, where *re Webb* (1848, 2 Ph. 532, and 17 L.J., N.S., Ch. 276) was distinguished *arguendo* on the ground that in that case there were no next of kin. It is not expressly stated in *re Scarlett* whether the applicant proposed to attend at his own expense or at that of the estate. But as the application was resisted in argument on the ground that it would cause an expense which was perfectly unnecessary, unless on the supposition, which ought not to be made, that the committee of the estate would not do his duty (*v. sup.*, at p. 741), the latter interpretation would appear to be the correct one.

[2] *Re Howell*, 1829, per Lord Lyndhurst, L.C., 2 Coop. *t.* C. 107; and see *re Meux*, 1808, *ib.* p. 106, which deals, however, with orders discouraging the attendance of the next of kin and heir-at-law.

[3] 1848, 2 Ph. 532; 17 L.J., N.S., Ch. 276.

[4] These are the words used in 2 Ph., at p. 534.

[5] These are the words used in the *Law Journal* report, *ubi sup.* The words "take in any proposals" do not refer to proposals as to committees, for the committee had already been appointed by the master; and, moreover, at an earlier stage in this very case the Court had given the person who was not interested in the real estate leave to carry in proposals for the appointment of a committee of the estate as well as of the person of the lunatic (1846, 17 L.J., N.S., Ch. 276; and 2 Ph. 116).

[6] The greater part of his Lordship's judgment dealt with the question whether the claim of a remainder-man to the office of committee was less favoured than that of an heir-at-law, because the former, acting in that character, was managing an estate which on the death of the lunatic was certain to be his, and had therefore a greater interest to improve it at the expense of the personal estate than the latter, who had only a hope of succession, which might be defeated by the lunatic's recovery and his making a will. Lord Cottenham said that he thought the distinction a technical one. It was only at the close of the judgment, and (according to 2 Ph., at p. 534) in answer to a subsequent application, that the question of the right of the natural daughter to carry in proposals was disposed of.

[7] As to Ireland, see p. 78. As to the curatory of idiots and lunatics in Scotland, see p. 77.

[8] Cp. Hunter's *Introduction to Roman Law*, p. 37.

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mitteeship both of the person and of the estate of a lunatic. Both offices may be united in the same individual or in two or more individuals jointly. But as a rule the committeeship of the person is now kept distinct from the committeeship of the estate. Either of the committeeships, too, may be held by one or more individuals. In *ex parte Ludlow*,[1] Lord Chancellor King refused to appoint two committees of the person, stating that he had found by experience that the practice was attended with inconveniences, by occasioning suits, and putting the estate to great expense. But this course was not followed by his successors,[2] and the modern practice is in favour of joint committees. The lunatic does not necessarily reside with the committee of the person, but the latter is responsible for his comfort.[3] Again, the committee of the estate is not invariably the person who manages it. For a committee of the estate may employ an agent, for whom he is of course responsible, to superintend details of management;[4] and in certain cases the Court will appoint a receiver of the rents and profits of a lunatic's estate. As to the appointment of receivers, see *post*.

Residence of lunatic.

Management of estate.

The committee of the person. His appointment.—As to the appointment of joint committees, see *sup.* The Court has full jurisdiction to exercise its discretion in regard to the appointment of committees as it may think best for the lunatic.[5]

Committee of person.

Appointment of.

In the exercise of this discretion, however, the following rules of practice will be kept in view.

Rules as to.

1. The committee of the person should be resident within the jurisdiction. The reasons for this rule are obvious. The committee of the person is charged with the duty of seeing to the comfort of the lunatic, and this duty cannot generally be so well performed by a person resident out of, as by one resident within, the jurisdiction. Again, it is desirable that the committee should be subject to the control of the Judge in Lunacy, a condition which would be defeated by his absence from the jurisdiction. These considerations appear at one time to have been so strongly felt, that the rule above stated was treated as an inflexible one.[6] But it cannot now be regarded in this light. In *re Bruère*,[7] it being proposed to appoint as committee of the person and estate a person resident out of the jurisdiction, and the Master in Lunacy having reported that on that ground he

1. Should be resident within jurisdiction. Reasons for rule.

Rule not inflexible.

[1] 1731, 2 P.W., at p. 637.

[2] See 1 Coll. Lun. 227, and Appendix *passim*.

[3] Cp. *Smith* v. *Bate*, 1784, 2 Dick. 631, per Lord Thurlow; *ex parte Mildmay*, 1795, 3 Ves. 2, per Lord Loughborough; and *ex parte Proctor*, 1818, 1 Swanst. 531, where the question arose impliedly and incidentally in connection with petitions for the removal of a bankrupt committee.

[4] *Re Brown*, 1849, 1 Mac. & G., per Lord Cottenham, L.C., at p. 205.

[5] *Re Davy*, 1892, 3 Ch. 38.

[6] Cp. *ex parte Ord*, 1821, Jac. 94, where Lord Chancellor Eldon said that if a sum was allowed the committee for the expenses of visiting the lunatic, and he went out of the jurisdiction, *e.g.* to reside permanently in Scotland, the Court would discontinue the allowance. *Re Tottenham*, 1837, 2 My. & Cr., per Lord Cottenham, L.C., at p. 41; and see *re Carysfort*, 1828, cited *ib.*, at p. 42 n. (*a*); *re Knox*, 1829, *ib.*; *re Newport*, 1829, *ib.*; and *re B.*, 1839, 1 Ir. Eq., per Lord Chancellor Plunket, at p. 182.

[7] 1881, 17 Ch.D. 775, and cp. *ex parte Fermor*, 1821, Jac. 405.

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was unable to approve of him, the Court being satisfied of the expediency of appointing him, declined to do so, *but only until* the Master had certified that the proposed committtee was a person of whom, if resident within the jurisdiction, he should have approved.

2. Preferably one able to visit lunatic frequently.

2. Persons whose places of residence admit of their frequently visiting the lunatic are preferred as committees.[1] This is a corollary to rule 1. The importance of both rules is now diminished by the fact that the Master requires an undertaking from the committee to visit the lunatic periodically, see *inf.* p. 346.

3. Relations preferred to strangers.

3. The relations of the lunatic are to be preferred to strangers in regard to the committeeship of the estate, primarily because they are the persons most capable of ministering to his comfort, and most likely to alleviate his calamity, but also because they ought not to have their affliction increased by the invidious imputation involved in the preference of a stranger.[2]

Among relations husband or wife preferred.

Among relations the husband or wife of the lunatic has the first claim, and so paramount has this claim been considered, that even in a case where the wife had been committed for a contempt of Court in not producing her husband at the inquisition, the custody of his person was granted to her on her being discharged from the commitment.[3] But if the immediate superintendence of the lunatic by the husband or wife appears to be calculated to promote the disorder, whether from unfounded suspicions or dislike on the part of the lunatic,[4] or because the husband or wife is injudicious or indifferent, or acting under the influence of others, or for whatever other cause, another person will be nominated to act with him or her;[5] and in a comparatively recent case[6] the Court refused to appoint as committee of the person of a lunatic her husband, who had treated her with great cruelty, and who, in the opinion of the Court, would have appropriated and spent on himself the allowance for her maintenance. Lord Justice Lindley said, "The Court has full jurisdiction to exercise its discretion to do what is most for the benefit of the lunatic;"[7] and Lopes, L.J., added,[8] "The husband has no indefeasible right to be appointed committee. If there is no precedent for the course which the Court is now taking, the sooner a precedent is made the better." In this case the mother was appointed committee of the estate, and a friend of the mother committee of the person.

Unless good reason to the contrary.

Next of kin.

If the lunatic is unmarried, the committeeship of the person is generally given to one or more of the next of kin—not being the heir-at-law.

Heir-at-law formerly not favoured. Why.

The heir-at-law was at one time seldom allowed to be committee

[1] *Ex parte Fermor*, 1821, Jac. 405.

[2] Cp. *re Watkins*, 1846, 1 Coop. *t.* C. 225. On an application by a stranger there should be an affidavit setting out in detail the circumstances which are alleged to render it necessary to pass over relations (*ib.*).

[3] *Lord Wenman's case*, 1721, 1 P.W. 702.

[4] *Re Dyce Sombre*, 1844, 8 Jur. 817.

[5] *Ex parte Le Heup*, 1811, 18 Ves. 221.

[6] *Re Davy*, 1892, 3 Ch. 38.

[7] *Ubi sup.*, at p. 39, and cp. 1 Bl. Com. 305. *Ex parte Ludlow*, 1731, 2 P.W. 638.

[8] *Ubi sup.*, at p. 40.

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of the person,[1] on the analogy of the rule of law which gave the guardianship in socage to the next of kin to whom the land could not descend, and who were, therefore, supposed not to have the same interest as the heir-at-law in the infant's death. Lord Chancellor Macclesfield, however, very much disapproved of this rule, which he characterised as "not grounded upon reason," but the offspring of "barbarous times before the nation was civilised"; and when he was applied to in *Mr. Justice Dormer's case*[2] on a like principle for an order to remove a lunatic from the custody of his uncle (who had, with the consent of the nominal committee, taken care of him for many years and treated him with the greatest tenderness), on the ground that he was entitled to his estate as the person next in remainder, refused to make such an order. It is pointed out with undeniable force by Mr. Vesey in a note to *ex parte Cockayne*,[3] that the distinction upon which the rule excluding the heir-at-law from the committeeship of the person was considered not applicable to the next of kin, from their interest in the probable increase of the personal estate during the life of the lunatic, was not satisfactory. "To those," he observes, "upon whom the suspicion, which was the foundation of that rule, could attach, immediate gain is a stronger temptation than the hope of future advantage, subject to disappointment not only by the casualties of life, but also where the state of the lunatic admits it, by the liberal application of his income for maintenance." In point of fact, an attempt was made in two cases at least[4] to bring the next of kin within the scope of the rule in question, though without success. The rule, however, in its original strictness has long been abandoned;[5] and preference is now given to the next of kin only as a matter of convenience in practice.

Criticisms of rule.

Attempt to bring next of kin within it.

Rule now abandoned.

4. The claims of consanguinity, although entitled to great regard, do not, however, constitute any right to the committeeship of the person, and in cases of misconduct or incapacity the nearest relations will be set aside in favour even of strangers. Thus in *Lady Cope's case*[6] a stranger was preferred to the lunatic's sister, on the ground that the latter had proposed making a considerable gain by the allowance for maintenance; in *ex parte Fletcher*,[7] a person (it does not appear whether he was related to the lunatic or not) was held unfit for the office of committee because he had entered into an agreement to give to another person three-fourths of the profits; and in *re Jones*,[8] where it appeared by the Master's report that the lunatic's property amounted only to the sum of £523, that the lunatic was a pauper belonging to and supported by the parish, and that her brothers and sisters were in very indigent circumstances, and some of them absent, the Lord Chancellor appointed the rector and two other inhabitants and freeholders of the parish where the lunatic resided

4. Strangers.

When preferred.

[1] 1 Bl. Com. 305.
[2] 1724, 2 P.W. 262.
[3] 1802, 7 Ves. 590a, n. (44).
[4] *Neal's case*, 1729, 2 P.W. 544; and *ex parte Ludlow, ubi sup.*
[5] *Ex parte Cockayne, ubi sup.*; *ex parte Seaman*, 1807, 1 Coll. Lun. 207.
[6] 29 Car. II., 2 Ch. Cas. 239.
[7] 1801, 6 Ves. 427.
[8] 1825, Shelf. Lun. 178.

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committees of her person and estate. The Court will not, however, pry too minutely into family quarrels perhaps founded in affection, or rake up every little bickering, to exclude different relations.[1] The general wish, if any, of the lunatic's family will be considered in regard to the appointment of a committee, so far as is consistent with the interest of the lunatic.[2]

Evidence in support of stranger's proposal. Access by family.

A stranger proposing himself as committee of the person should support his application by affidavits showing the circumstances that render it expedient that relations should be passed over;[3] and if he is appointed, an order may be made that the family shall have access to the lunatic.[4]

5. Wishes of lunatic considered.

5. In the appointment of a committee of the person the wishes and inclinations of the lunatic will as far as possible be regarded,[5] even if they are unreasonable.[6] Effect may be given to the lunatic's views in various ways. A person objected to by him may not be appointed. Thus in *ex parte Fletcher*,[7] Lord Eldon refused to appoint a Master in Chancery committee of the estate where it appeared that the lunatic had conceived a strong prejudice against lawyers in general. Or another person or other persons may be joined with him in the committeeship.[8] Or, as a third alternative, the lunatic may be permitted to reside with some person in whom he has confidence, subject, however, to surveillance by the committee of the person.[9]

6. Preference to committee of same sex as lunatic.

6. A committee of the same sex as the lunatic will *ceteris paribus* be preferred.[10] As to penalties for ill-treatment of lunatic, see sec. 322, *post*; for abuse of female lunatic, see sec. 324, *post*. As to prohibition of employment of males in institutions for lunatics, in the custody of female lunatics, see sec. 53, *ante*.

Practice where committee married woman.

The custody of a lunatic may be granted to a *feme covert*.[11] It is usual, however, to join the husband with her in that office.[12] In one case,[13] where the committee of a lunatic was a married woman living apart from her husband, Lord Cottenham, L.C., ordered the allowance for maintenance to be paid to her on her separate receipt, on her solicitors undertaking that the money should be duly applied.

[1] Per Lord Eldon, L.C., in *ex parte Le Heup*, 1811, 18 Ves., at p. 226.

[2] *Re Lord Bangor*, 1818, 2 Moll. 518; and cp. *ex parte Fletcher*, note 7.

[3] *Re Watkins*, 1846, 1 Coop. *t.* C. 225.

[4] *Re Aghrim*, 1808, 1 Coll. Lun. 229.

[5] Per Lord Chancellor Plunket in *re Leacocke*, 1838, Ll. & G. *t.* Pl., at p. 502.

[6] See *re Dyce Sombre*, 1844, 8 Jur. 817.

[7] 1801, 6 Ves., at p. 427. The official position of the proposed committee was, however, another ground for the refusal.

[8] *Ex parte Le Heup, ubi sup.*; *re Dyce Sombre, ubi sup.*

[9] *Re Cumming*, 1852, 1 De G. M. & G. 56. Here the order was made pending a traverse. But there is nothing to prevent this course being taken in any case.

[10] *Ex parte Ludlow*, 1731, 2 P.W., at p. 637.

[11] *Ex parte Kingsmill*, 1720, 3 P.W. 111 n. (B).

[12] *Ex parte Lyne*, 1735, Cas. *t.* Tal. 143; and cp. *ex parte Mildmay*, 1795, 3 Ves. 2, which is only an instance of a joint grant, and not an authority for the proposition stated in the text. Where it is not expedient to appoint a husband joint committee of the estate with his wife, he should, with two sureties, join in the security (*re Martin*, 26th Jan. 1876).

[13] *Re Edwards*, 1850, 2 Mac. & G. 134.

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No necessary preference in the case of a competition for a committeeship is given to the person having the carriage of the commission.[1]

No preference to person having carriage of commission.

A *caveat* may be entered in the Masters' Office against the appointment of committees, and thereafter no order will be made unless notice has been given to the solicitor or party by whom, or on whose behalf, the *caveat* was entered.[2]

Caveat against appointment of committees.

The duties and position of the committee of the person.—The duties of the committee of the person may be generally and compendiously described in a single sentence. He has to see to everything that relates to the personal care of the lunatic committed to his charge. The particular and subsidiary duties arising from this delicate and important trust may be summed up under a few heads.

Committee of person, duties and position of. General duty. Particular duties.

1. *Duties as to residence.*—The committee may settle and change at pleasure the lunatic's residence, which may be either with himself or with some other suitable person for whom he is responsible (see *ante* p. 341). He may also, if he thinks fit, place the lunatic in an institution for lunatics or under care as a single patient; and for this purpose an order signed by the committee, and having annexed thereto an office copy of the order appointing him, will be a sufficient authority for the lunatic's reception (sec. 12, *ante*).[3]

1. As to residence. May settle and change residence.

These general powers are, however, subject to certain qualifications. (*a*) In the first place, any express directions in the order appointing the committee must, of course, be obeyed, unless special leave to vary them has first been obtained. (*b*) Again, the committee must have regard to the amount of the allowance for maintenance (as to which see *post*) in any arrangements that he makes as to the lunatic's residence. (*c*) Moreover, the lunatic must not be removed out of the jurisdiction without the leave of the Judge in Lunacy[4] (whether the order appointing the committee contains any direction or prohibition in regard to the matter or not), and such leave will only be granted under particular circumstances, as *e.g.* where the lunatic has relatives to whom he is attached in the place to which it is proposed to send him,[4] or where a medical practitioner has advised the change on medical grounds;[5] and the Judge in Lunacy may fix the area[5] or the places out of the jurisdiction to which the lunatic may be taken, and security, to be approved of by the Master and capable of being enforced in the English Courts, for the return of the lunatic must be given by the committee previous to the removal of

Subject to (*a*) directions in order. (*b*) Amount of allowance.

(*c*) Not removing lunatic out of jurisdiction without leave.

Leave when granted.

[1] *Re Webb*, 1846, 2 Coop. *t.* C., per Lord Cottenham, L.C., at p. 155. It was stated in argument in this case to have been the practice of the Masters in Lunacy to give such a preference, unless there was some special reason to the contrary. Lord Cottenham said that he had never heard of such a practice, and that if it did exist it was most improper, and he should not sanction it.

[2] *Re Galpine*, 1808, Shelf. Lun. 72, and see form of, in Appendix, *post*; and cp. *re Howell*, 1829, *ib.*

[3] If no committee has been appointed, an order signed by a Master will be sufficient.

[4] *Re Jones*, 1844, 1 Ph., 461. As to stoppage of allowance in case of unauthorised removal out of jurisdiction, see *post* p. 347.

[5] *Re Hackett*, 1854, 3 Ir. Ch. 375.

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the lunatic.[1] For the purpose of such security, the Scotch Courts are foreign.[2] As to duties of committee to report change of residence to visitors, see *inf.*

2. As to treatment.

2. *Duties as to treatment.*—Subject to the qualification above noted, as to the duty of complying with the express directions of the Judge in Lunacy,[3] or of obtaining special leave before any deviation from them is made, and as to the necessity of keeping the amount of the allowance for maintenance in view, the committee of the person has a wide discretion on all matters of treatment. He is entitled and bound to secure to the lunatic all the comfort and enjoyment that his fortune will admit of, to provide him with medical attendance if necessary, to protect him from designing persons, and even from the access of relatives and friends if it is likely to increase his disorder. As to the mechanical restraint of lunatics, see sec. 40, *ante*, which applies to *any lunatic*. The remedy for any person who is aggrieved by any act or decision of the committee of the person is either to apply to have him removed (as to which see *post*), or to take out a summons returnable before the Master to have his determination on any point reversed. This would be the proper procedure in regard to any questions as to the exercise of the committee's discretion, such as, for instance, refusal of access to any person.[4]

Wide discretion. Comfort.

Protection.

Remedy of person aggrieved by exercise of discretion.

3. As to visitation and reports. Undertaking to visit now required.

3. *Duties as to visitation and reports.*—It is now the invariable practice of the Master in Lunacy before approving of a committee of the estate to require from him an undertaking to visit the alleged lunatic periodically. The form of undertaking embodied in rule 4 of the Rules in Lunacy 1893, *post*, should be followed, with the necessary modifications. The usual requisition is a visit once in every three months. But more or (*semble*) less frequent visits may be required or allowed in particular cases if the Judge in Lunacy think fit. The committee is also required, in order to facilitate the visitation of lunatics so found by the Chancery Visitors (see *inf.*), (α) to give them due notice as to his own residence, and as to the name and residence of the lunatic's medical attendant; (β) within three days after any change shall have taken place in the residence of the lunatic, to send by post to the office of the Visitors of Lunatics, Royal Courts of Justice, London, notice thereof, with the address of the place to which the lunatic has been removed (Rules in Lunacy 1893, r. 11, *post*, and see form in Appendix, *post*);[5] and (γ) to make half-yearly a report to the Board of Visitors on the mental and bodily state of the lunatic, and may, of course, report specially at any time on any matter of importance affecting either.[6] See form in Appendix, *post*.

Also to facilitate visitation by Chancery Visitors.

[1] In *re Stair*, 1846, 1 Coop. *t.* C. 227; and *re Jones*, *ubi sup.* p. 345, note 4.

[2] In *re Stair*, *ubi sup.*, at p. 228.

[3] In *re Pearson*, 1829, Shelf. Lun., edit. 1833, 143, an order for the visitation of a lunatic at her residence by a particular physician was made by the Lord Chancellor.

[4] Access will not be granted by the Judge in Lunacy if the visit would be dangerous and irritating to the lunatic (*ex parte Lyttelton*, 1801, 6 Ves. 7), or the application is made on behalf of any one who does not satisfy the Court that he has an interest in making it (*R.* v. *Clarke*, 1762, 3 Burr. 1363). As to access to *alleged* lunatics, see *ante* p. 286.

[5] As to sending notices by post, see sec. 329, subs. (1), *post*.

[6] Rules in Lunacy, 1892, r. 108, *post*.

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As to visitation of by Chancery Visitors, see sec. 183, *post*.

As to reports of Chancery Visitors, see secs. 185, 186, *post*.

Security not required.

Security is not ordinarily demanded from the committee of the person. But if he is authorised to retain any furniture or effects of the lunatic, he has to sign an inventory thereof and an undertaking (as to the form of which see rule 4 of the Rules in Lunacy 1893, *post*) to deliver up the same when required so to do, and such inventory and undertaking are deposited in the Masters' Office (r. 120 of the Rules in Lunacy 1892, *post*).

Inventory and undertaking as to effects retained.

Allowance for expenses.

Although a committee of the person ordinarily receives no remuneration, an annual allowance for the expenses of visitation may be made to him; but the allowance will be immediately stopped in case of the unauthorised removal of the lunatic out of the jurisdiction.[1]

Committee of estate. Appointment of. Resembles that of committee of person.

The committee of the estate. His appointment.—In certain particulars the appointment of a committee of the estate is governed by the same considerations that apply to the appointment of a committee of the person (as to which, see *ante* p. 341.)

(1) Relations preferred.

(2) Stranger when appointed.

(3) Residence at distance an objection.

Relations or persons interested in the estate are preferred to strangers.[2] A stranger may, however, be preferred; and in one case[3] a neighbouring gentleman, unconnected with the lunatic, but of good character, and considered likely to manage the estate to the best advantage, was chosen. Again, the fact that a committee resides at a distance from the estate of the lunatic is an objection of which account will be taken.[4] But it is not a conclusive ground for refusing to appoint him,[5] and the objection is not, perhaps, so formidable as it looks, and in any event there are various ways in which it may be overcome. In the first place, it has to be borne in mind that the cases in which special emphasis was laid on the necessity of the committee of the estate residing near the property of the lunatic were decided in times when communication between distant places was irregular and slow.

How met.

Appointment of agent.

Again, a committee of the estate is entitled to employ agents,

If there is a medical attendant of the lunatic, he must either countersign the report of the committee or make a separate report, which is to accompany the report of the committee or be forwarded direct to the Board of Visitors (*ib.*). And as to the power of the Board to summon the committee before them, see r. 109, *ib.* Wilful misstatement of material fact in any such report is a misdemeanour, sec. 317, subs. (2), *post*. As to protection of person making report, see sec. 330, *post*.

[1] *Ex parte Ord*, 1821, Jac. 94. Here, however, although the allowance was stopped, Lord Eldon, L.C., granted an inquiry, at the committee's peril as to costs, as to expenses actually incurred. In *re Bruère*, 1881, 17 Ch.D. 775, however, the appointment of a committee of the person resident out of the jurisdiction was approved of.

[2] *Re Watkins*, 1846, 1 Coop. *t.* C. 225. Before the Court will appoint a stranger as committee of the estate of a lunatic who has relations, there must be an affidavit stating in detail the circumstances alleged to require and justify the preference (*ib.*; and cp. *ex parte Le Heup*, 1811, 18 Ves., at p. 227).

[3] *Re Neal*, 1729, 2 P.W. 544.

[4] *Re Miles*, 1831, Shelf. Lun. 169; *re Neal, ubi sup.*; *re Brown*, 1849, 1 Mac. & G. 201.

[5] Or for ordering his discharge, although it may be a ground for ordering an inquiry before the Master as to the propriety of this being done (*re Brown, ubi sup.*)

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for whose conduct he is of course responsible, to superintend details of management;[1] and the Court also is empowered to appoint a receiver where the committee resides at a distance from the estate.[2] Moreover, where two committees of the estate are to be appointed, it appears that they may agree to divide the management, and each take a portion of the property under his peculiar charge.[3] Or if the estates are situated at a distance from each other, the Court may appoint a separate committee for each.[4]

Division of management by joint committee.

(4) Improper conduct disqualifying.

Persons guilty of any impropriety of conduct are, of course, equally ineligible for either committeeship, and in either case[5] two or more persons may be appointed joint committees without it necessarily following that any one of them could properly be appointed alone.[6]

Appointment of committee of estate.

On several points, however, the appointment of a committee of the estate stands on a different footing from that of a committee of the person.

Differences from that of committee of person.

(1) Heir-at-law preferred.

The heir-at-law is preferred to the next of kin (*v. ante* p. 342) in the appointment to the committeeship of the estate, on the supposition that he has the greatest interest in taking care of the property and preserving it in good condition,[7] and, in this matter, there is no substantial distinction between a remainder-man and the heir-at-law.[8]

(2) Stronger objection to certain appointments.

Solicitor under commission.

Master.

Again, there is a stronger and more definitive objection to the appointment of certain classes of persons (by reason of the position in which they stand to the lunatic) to the committeeship of the estate than to that of the person. Thus the solicitor under the commission is disqualified for appointment as committee of the estate;[9] and a Master is equally ineligible.[10]

[1] *Re Brown, ubi sup.* p. 348, note 4.

[2] *Re Seaman*, 1808, Shelf. Lun. 187. As to appointment of receivers generally, see *post*.

[3] *Re Robins*, 1831, 2 Russ. & My. 449. It was stated in argument in that case that the practice referred to in the text was a common one. Of course the committees would remain jointly and severally responsible.

[4] *Re Robins, ubi sup.* Here, however, the heir-at-law and next of kin made no objection. *Semble*, that in such a case such committee would be accountable only for the estate with whose management he was entrusted.

[5] As to committee of person *v. ante* p. 341.

[6] *Re Noble*, 1852, 2 De G. M. & G. 280.

[7] Cp. 1 Bl. Comm. 304; *re Lord Bangor*, 1818, 2 Moll. 518.

[8] *Re Webb*, 1848, 2 Ph., per Lord Cottenham, L.C., at p. 533.

[9] Cp. *ex parte Pincke*, 1817, 2 Mer. 452, a case relating, however, to the appointment of a receiver (see *post*).

[10] *Ex parte Fletcher*, 1801, 6 Ves. 427; *re Hussey*, 1828, 1 Moll. 226. It was at one time the practice in Ireland to appoint the Masters committees of the estates of lunatics (*re Hussey, ubi sup.*). The consequence of this practice was that what was allowed in England only under particular circumstances, viz. the appointment of receivers under the committee, was followed in Ireland as a matter of course when a Master was committee of the estate. Cp. *re Fitzgerald*, 1805, 2 Sch. & Lef., at p. 439; *re Lanesborough*, 1826, Ll. & G. *t.* Pl., at p. 504. Moreover, when a Master in Ireland was appointed committee of the estate, the usual grant of the custody of the estate was not made to him, but his appointment rested entirely on the order of the Lord Chancellor, and no security was taken from him as from other committees. But the inconveniences arising from it were so great (cp. *ib.*, at p. 508) that the practice was disapproved of both by Lord Chancellor Hart in *re Hussey, ubi sup.*, and by Lord Chancellor Sugden in *re Doolan*, 1843, 3 Dr. & W. 445, and it has now been abandoned. It does not appear to have ever

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Reasons for exclusion of Master.

The reasons for the exclusion of a Master from such appointments, viz. (1) that the object of his office is to acquire direct knowledge about the estate, and exercise a controlling influence over its management,[1] and (2) that if Masters might be appointed committees of lunatics' estates, they would have to pass each others' accounts,[2] apply with greater force to the committeeship of the estate than to that of the person, although in the latter case also it is conceived that the disqualification would exist.

The exclusion of the solicitor under the commission from the committeeship of the estate was treated in *ex parte Pincke*[3] as being a corollary to the exclusion of the Master. It is conceived, however, that the two cases really rest on different bases. The Master is excluded chiefly because it is against public policy that a person should be committee whose duty or one of whose colleagues' duty it is to call the committee to account. The solicitor under the commission is ineligible because of his interest as representing the petitioner in the inquisition. It is on a similar principle that a party liable already to account to the lunatic's estate will not generally be appointed committee of the estate.[4]

Party liable to account to lunatic's estate.

Remuneration of committee.

No right to allowance for trouble.

Though next of kin consent.

The position of the committee of the estate as regards remuneration.—The committee of the estate[5] has no right, legal or equitable,[6] to any allowance in respect of trouble taken by himself or others whom he employs as agents in the execution of his trust,[7] even if the next of kin consent to the application, as he is presumed to have undertaken the office out of regard for the lunatic or his family, and in any event from charitable motives.[8]

Allowance granted when for benefit of estate,

This rule must, however, be taken with considerable qualification, as there is a long series of cases in which an allowance has been made to committees for trouble taken and expenditure incurred in the management of the estates of lunatics, although the grant is made for the sake not of the committees but of the estates.[9]

if demand reasonable, and committee refuse to act otherwise.

In determining whether or not to grant an allowance, the Court will have regard to the questions whether (1) the demand for the allowance is reasonable under the circumstances, and (2) the committee absolutely refuses to act without it, and no other suitable committee can be found.

prevailed in England, though an attempt was made to establish a precedent for it in *ex parte Fletcher*, *ubi sup.*

[1] *Re Hussey*, *ubi sup.* p. 348, note 10.

[2] *Ib.*, *sup.*

[3] *Ubi sup.* p. 348, note 7.

[4] *Re Millington*, 1854, 2 Eq. R. 158, where, however, such an appointment was made as no one else could be found to undertake the office; but the proposed committee being also sole testamentary guardian of one of the next of kin, an infant, the Court ordered the Master to appoint another guardian to attend to the interest of the infant in all proceedings before him.

[5] As to position of committee of person in regard to remuneration, see *ante* p. 347.

[6] Cp. *re Weld*, 1882, 20 Ch.D., at p. 462. The facts of this case are dealt with at p. 350.

[7] *Re Annesley*, 1749, Ambl. 78, and *Anon.*, 1804, 10 Ves. 103; *ex parte Fermor*, 1821, Jac., at p. 406; *re Walker*, 1848, 2 Ph. 630; *re Westbrooke*, 1848, *ib.* 631. The same rule prevails in Ireland, *re Lanesborough*, 1826, Ll. & G. *t.* Pl., at p. 508.

[8] *Re Annesley*, *ubi sup.*, per Lord Hardwicke, L.C., at p. 78.

[9] *Re Walker*, *ubi sup.*

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Allowance reasonable.

When estates large and dispersed.

When committee unconnected with lunatic.

(1) An allowance has been held reasonable (*a*) where the lunatic's estates were large and lay dispersed in England and Ireland;[1] and (*b*) where the committee of the estate was unconnected with the family, and had been induced at their request to allow himself to be proposed in order to carry into effect a previous recommendation by the Lord Chancellor in the same case, that a person whose place of residence admitted of his frequently visiting the lunatic and inspecting the management of his concerns should be appointed, and where, furthermore, the work of inspecting the property, and receiving and remitting the rents would be attended with considerable trouble.[2]

Where committee refuses to act without allowance.

(2) In *re Walker*,[1] Lord Cottenham, L.C., refused to entertain an application for an allowance unless on the understanding that the committee absolutely refused to continue on the existing terms; and in *re Smith*,[3] Lord Chancellor Lyndhurst directed the Master to ascertain whether no proper person could be found to act as committee before allowing remuneration to a committee who had been nominated without his consent, and who declined to act without a proper salary.

Forms of allowance.

The relief granted to a committee who demands an allowance may assume various forms.

Allowance without liability to account,

(*a*) *Large allowance for definite purpose without liability to account.*—An allowance may be made to the committee for a given purpose, as, for instance, the maintenance of an establishment suitable to the lunatic's fortune and position in life. When such an allowance is made, no account will be asked so long as the establishment is properly maintained, since it is understood that the committee has the allowance made something beyond what would otherwise be necessary with a view to some benefit either for himself or for some other member or members of the family. But the allowance is still an allowance made to a person in a fiduciary character, and for a definite purpose, and the Court will see that the purpose is carried out. Moreover, the committee has no legal or equitable right to the allowance so as to enable him to deal with it in any manner that shall fetter the power of the Court to deal with it in any way, and therefore he cannot mortgage, borrow upon, or sue for it.[4] These principles are illustrated by, and indeed the statement of them given above is largely derived from, the case of *re Weld*.[4] There an order[5] had been made that the brother of a lunatic, who was committee of the estate, should be allowed to retain the family mansion and grounds, and heirlooms therein, for his own use and occupancy and that of his unmarried sisters, and that £4000 a year should be allowed him for his expenses in reference thereto. The committee and his sisters all used the mansion accordingly, and incurred heavy and, as it was alleged, unreasonable expenses about the establishment. The income

or power to borrow on or sue for.

re Weld.

[1] *Ex parte Annesley*, *ubi sup.* p. 349, note 7; and cp. *re Walker* and *re Westbrooke*, *ib.*; also *re Brown*, 1849, 1 Mac. & G. 201, and *re Errington*, 1826, 2 Russ. 567.

[2] *Ex parte Fermor*, *ubi sup.* p. 349, n. 7.

[3] 1828, Shelf. Lun. 230; and cp. *re Palmer*, 1828, *ib.* 229.

[4] *Re Weld*, 1882, 20 Ch. D. 451.

[5] See form of order in Appendix, *post.*

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being insufficient to pay the allowance, it fell into arrear, and the committee mortgaged the arrears. He subsequently was removed from being committee, and became bankrupt, and a large number of bills incurred in keeping up the establishment remained unpaid. A surplus having arisen applicable to payment of the arrears, the new committee presented a petition[1] for direction as to its application. The Court held that the former committee had no right to mortgage the allowance, and that the mortgagee stood in no better position than he did, and directed an inquiry as to which of the debts of the committee were properly incurred in keeping up the establishment.[2]

Limited allowance with or without reference to expenditure.

(*b*) *Limited allowance with or without reference to actual expenditure.*—Thus, in *ex parte Annesley*,[3] an increase of £200 to an existing allowance of £400 a year was made; in *re Errington*,[4] the appointment of an inspector (under the committee) of the lunatic's property at a fixed salary of £40 a year, to be paid out of the rents, was sanctioned; in *ex parte Fermor*,[5] an inquiry was directed as to what would be a reasonable allowance to the committee under the circumstances; in *re Westbrooke*,[6] actual expenditure not exceeding 5 per cent on the receipts was allowed.

Appointment of a receiver.

(*c*) *Appointment of a receiver.*—See *post*.

Duties of committee of estate.

Duties of the Committee of the Estate.

1. Security, obligation to find.

1. *Security. The obligation to find security.*—As the committee of the estate is considered as a mere bailiff, appointed by the Crown, and under its control, to take care of the property of the lunatic, acting according to the duty imposed upon the Crown, and liable to account and removal for misconduct,[7] he has from the earliest times been required to give security for answering and duly accounting for the rents and profits of the estates entrusted to him at periodical intervals. Where the lunatic's property was very small, and could be brought into Court, or otherwise satisfactorily provided for, the usual security required of committees was in some old cases[8] dispensed with, and a similar course has been taken where no person who would act as committee would give security.[9] But the requirement of security is now, to all intents and purposes, invariably insisted upon.

When formerly dispensed with.

Now invariably required.

[1] See form of petition set out in 20 Ch.D., at p. 455.

[2] See form of order in this case in Appendix, *post*.

[3] 1749, Ambl., 78. An order of this description was refused in *re Lanesborough*, 1826, Ll. & G. *t.* Pl. 503, but there were special circumstances in that case.

[4] *Ubi sup.* p. 350, note 1. See form of order, Appx. *post*.

[5] 1821, Jac. 406. See form of order, Appx. *post*.

[6] 1848, 2 Ph. 631. As to committees of the estate incurring irregular expenditure, see *re Brown*, 1849, 1 Mac. & G. 210.

[7] Per Lord Redesdale, L.C., in *re Fitzgerald*, 1805, 2 Sch. & Lef., at pp. 437 and 438; and see also p. 436, where the liability to account is deduced from the statute *de Praerogativâ Regis*, 17 Edw. II. c. 10, and cp. *Isaacs* v. *Chinery*, 1896, 12 Times L. R. at p. 302.

[8] *Re Hicks*, 1825, Shelf. Lun. 193; *re Lee*, 1825, *ib*.

[9] *Re Burroughs*, 1842, 1 Con. & L. 309; and cp. *re Frank*, 1826, 2 Russ. 450, where Lord Eldon, L.C., said that he could not appoint a committee without

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Time for perfecting.

Time within which security must be perfected.—The obligation to perfect the security arises, and should be discharged, so soon as the order for the appointment of the committee has been approved by the Judge in Lunacy. If there is any delay on the part of the committee, a time is fixed by the Masters,[1] who are expressly empowered to deal with this matter by the Rules in Lunacy 1892, r. 117.

Usually three weeks. When enlarged.

The period usually limited is three weeks.[2]

The time for perfecting the security has, however, occasionally been enlarged, as, for instance, where the circumstances justified an application for the reduction of the security,[3] and where the amount required was large and one of the intended sureties was absent on the Continent,[4] or where the committee had neglected to complete the security required through inadvertence.[5]

Case for reduction of. Amount large and surety absent. Inadvertence.

Extension, how obtained.

An application for an extension of time should be made by summons taken out by the solicitor who has the charge of the proceedings before the time originally limited expires, and served upon the persons entitled to apply for the committee, or their solicitors.[6]

Order appointing committee takes effect only on perfection of security.

The order appointing a committee of the estate takes effect only on the Master certifying that he has perfected the security, and until the security has been perfected the approved committee is not, unless otherwise ordered, to interfere in any manner in the affairs of the lunatic as committee of the estate or otherwise (r. 117 of the Rules in Lunacy 1892, *post*). In one case,[7] where the income of a lunatic consisted of rents payable weekly, the committee was, so as to prevent the risk of loss to the estate, allowed to receive them before perfecting his securities, on his undertaking to perfect them within six weeks.

Form of security. Bond. Down to 1890.

The form of the security. Bond.—Down to 1890 the security took the form[8] of a joint and several bond to the Queen by the committee and two sureties. It was the duty of the Attorney-General, on behalf of the Crown, to settle the amount of the requisite security, to approve of the sureties, and to see that the bond was properly executed and filed with the Clerk of the Custodies.[9]

Still used.

Security is still generally taken in the form of a bond.

Procedure.

The procedure is as follows:—The solicitor having the carriage of the commission should attend at the Masters' Office with office copies of the

security, unless the Master reported that no person willing to give it could be found.

[1] Elmer, p. 68. As to service, etc., of summonses, see Rules in Lunacy 1892, rr. 93-99, *post*.

[2] Elmer, p. 73.

[3] *Re Jones*, 1827, Shelf. Lun. 194. As to reduction of security, see *post*.

[4] *Re Clare*, 1827, *ib.*; and cp. *re De L'Isle*, 1828, *ib.*

[5] *Re Arrowsmith*, 1828, *ib.*

[6] Shelf. Lun. 194.

[7] *Re Rutter*, 1852, 22 L.J., N.S., Ch. 178.

[8] See form in Appx. *post*. In Shelford's Lunacy, edit. 1833, p. 148, it is stated that the committee entered into recognisances. This, however, appears to be a mistake, see 2 Coop. *t.* C. 63, note (*a*). It was a receiver and not a committee who entered into recognisances.

[9] Shelf. Lun., edit. 1833, at p. 148. The office of Clerk of the Custodies was abolished in 1842, and after that date the bond was kept by the Masters in Lunacy.

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Master's certificate (see p. 352), and the order or fiat confirming it, and a minute of the names and addresses of the proposed sureties, the committees of the person and the estate, and the then residence of the lunatic. If no objection is taken to the proposed sureties, the bond[1] and the affidavits[2] are prepared forthwith, and delivered to the solicitor. It seems that, under the old practice, the Attorney-General would seldom approve of sureties objected to by any of the parties interested.[3] But any person of respectable character, of means adequate to give the amount of security required, and not undesirable on the ground of the position in which he stands towards the committee, would probably now be accepted, as in other cases, without difficulty. A partner of the committee or the solicitor to the commission might be considered objectionable; and, as a general rule, the committee of the person will not be accepted, although in one case[4] this rule was departed from, where the Attorney-General consented, and on condition that the allowance to the lunatic should be paid direct to the committee of the person without passing through the hands of the committee of the estate.[5] In *Cockburn* v. *Raphael*,[6] Leach, V.-C., in appointing a receiver in India of a testator's assets, required him to give sureties resident in England, and the residence of the surety within the jurisdiction might be required also in the case of sureties for committees, with a view to the enforcement, if necessary, of the bond (see *post* p. 354). But it is conceived that this would be treated as a matter of convenience, and not as an imperative rule.

Who may be sureties.

The execution of the bond is attested by two witnesses, one of whom verifies the execution by affidavit; and if there are several affidavits of execution, the bond is made an exhibit to each. After execution,

Attestation of bond.

[1] See form of, Appx. *post*.

[2] As to affidavits, see Rules in Lunacy 1892, rr. 88-91, *post*.

[3] Shelf. Lun. 149.

[4] *Ex parte Mount, re Burton*, 1851, 21 L.J., N.S., Ch. 221.

[5] It should be noted that, as the condition of the committee's bond is that he shall obey the orders of the Lord Chancellor with reference to the lunatic's estate, in case of his disobedience the sureties are in general liable for anything that he is liable for. Thus, in *re Lockey*, 1844, 1 Ph. 509, the sureties in a committee's bond were held liable on the default of the committee, not only for the balance reported due from him on his accounts, but also for the costs of proceedings subsequently taken against him for the purpose of enforcing payment of such balance, although they had no notice of the default of their principal until after those proceedings had been taken. Lord Cottenham, L.C., said, *ubi sup.*, at p. 510: "If the sureties were not apprised of the proceedings, it was their own fault, for it was their duty to see that the committee duly passed his accounts." Again, in *Dawson* v. *Raynes*, 1826, 2 Russ. 466, Lord Eldon, L.C., while not enforcing the rule, owing to special circumstances, viz. that the receiver had been bankrupt with the knowledge of all parties for a considerable length of time, and no steps had been taken to compel the passing of his accounts, stated that in general the sureties of a receiver are liable for such interest as well as such principal as the receiver himself is liable to pay. And in *re Graham*, 1895, 43 W.R. 103, Chitty, J., followed this case, and held that a surety for a receiver is answerable to the extent of the amount of his recognisance for whatever sum of money, whether principal, interest, or costs, the receiver has become liable for, including the costs of his removal and of the appointment of a new receiver in his place. See an order for the enforcement of the bond against a committee and his sureties in *re Hill*, 1863, 1 De G. J. & S. 487.

[6] 1825, 2 Sim. & St. 453.

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the bond and affidavits are returned to the Masters' Office; the Master endorses his approval on the bond, and grants a certificate of the completion of the security,[1] and on the grant of this certificate the order of the Judge in Lunacy appointing the committee takes effect (r. 117 of the Rules in Lunacy 1892, *post*). The bond and affidavits remain deposited in the Masters' Office.[2]

Payment into Court.

Payment into Court.—By r. 71 of the Rules in Lunacy 1892, *post*, reproducing r. 73 of the Rules in Lunacy 1890, the Master may authorise the committee of the estate to give security in whole or in part by bringing into Court a sufficient sum of money or stock, and may for that purpose, by order, give liberty for payment or transfer into Court of any money or stock, and direct how the money is to be invested and the dividends applied, and the Paymaster-General is to give effect to every such order. As to the preparation of Orders in Lunacy to be acted upon by the Paymaster-General, the lodgment of funds in Court, and payment out, investment and exchange, or conversion of such funds, see the Supreme Court Funds Rules 1894.

The security to be given by committees (or receivers) may be that of guarantee societies, provided the Masters in Lunacy are satisfied of the solvency and respectability of such societies. For this purpose the bonds proposed to be given are first settled and approved by the Masters, and should be, so far as practicable, in accordance with the ordinary form of bond; and the Masters may, if they think fit, in settling the security to be given by the committees or receivers, take such security in the manner and form aforesaid (Memorandum of Judges, 17th Nov. 1888). See forms of such bonds in Appx. *post*.

Enforcement of security. Where by bond.

Enforcement of the security in case of default. Where by bond.—The bond given by the committee of the estate of a lunatic has always been treated[3] as an obligation or specialty of the same force and effect as a statute staple within 33 Hen. VIII. c. 39, sec. 50. The Crown is therefore entitled to treat the bond as a matter of record, to enforce it against the lands of the obligor by extent, preceded by a writ of *scire facias*.[4] The bond is ordered to be delivered up to the proper officer in the office of the Queen's Remembrancer, for the purpose of enforcement where the obligors or some of them are

Enforceable by *scire facias*.

[1] Elmer, p. 73.

[2] *Ib.* p. 74.

[3] This appears from the records of the Petty Bag Office, 2 Coop. *t.* C. 69. But the point is also covered by authority. It was raised but not decided in *R.* v. *Lambe*, 1824, M'Cl. 402, but was directly decided in *Reg.* v. *Chambers*, 1843, 11 M. & W. 776. Cp. *ex parte Usher*, 1809, B. & B. 197, where a different view was taken; and *R.* v. *Wrangham*, 1831, 1 Cr. & Jer. 408; and *re West London Commercial Bank*, 1888, 38 Ch.D. 364.

According to Blackstone (3 Comm. 420), upon forfeiture of recognisances or debts acknowledged on statutes merchant or statutes staple, the body, lands, or goods may all be taken at once in execution to compel the payment of the debt. It appears, however (2 Coop. *t.* C. 71), that the statute staple was the quicker remedy of the two, as in that case a *capias* and extent of lands, goods, and chattels were contained in one writ.

[4] See forms of declaration, plea, and replication in *scire facias*, 2 Coop. *t.* C.; *R.* v. *Lawrence*, 1798, at p. 73; *Stratford* v. *Dodsley*, 1841, *ubi sup.*, at p. 79; and *Gifford* v. *Stimpson*, 1830, *ubi sup.*, at p. 85.

resident in England or Wales.[1] Where both the committee and sureties reside in Scotland, proceedings for enforcing the bond must be instituted in the Scotch Courts, and the sum recovered will be lodged in a bank in Scotland, to await the order of the Lord Chancellor.[2] The remedy on this bond does not deprive the Judge in Lunacy of his general powers over the committee of the estate, and if a committee should disobey an order for payment of what has been found due from him, the order may be enforced by attachment.[3]

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Attachment.

Where by payment into Court.—As to enforcement of security in such cases, see Supreme Court Funds Rules 1894, vi.

Where by payment into Court.

Reduction and increase of security.—If after the completion of the security the estate of the lunatic becomes either reduced or increased in value, the Master, in the former case on the request of the committee, may reduce, and in the latter, either on request[4] or *ex proprio motu*, increase the security to an amount corresponding in his judgment with the condition and income of the property (cp. r. 70 of the Rules in Lunacy 1892, *post*). If the security is by bond (see *ante* p. 352) the proper course is for the committee to apply—*semble*, by summons[5]—to have the bond delivered up and a less or greater security taken;[6] and upon the fresh security being duly perfected and the balance then due by the committee paid or secured to the satisfaction of the Master (r. 72, *post*), the bond will be delivered up to be cancelled (r. 9, Rules in Lunacy 1893, *post*). If the security consists of money paid into Court (see *ante* p. 354) the application will be that part of the fund shall be paid out or transferred, or that further payment into Court be made (see Supreme Court Funds Rules 1894), and the Master may make an order for the repayment or retransfer, or payment or transfer, out of or into Court, in such manner as the Master thinks proper (r. 9, Rules in Lunacy 1893, *post*). If the committee fail to perfect his security within the required time, unless an extension of time has been granted, the Master may proceed to inquire whether a new committee ought to be appointed (r. 79 (*a*), *post*), and may make an order for such appointment (r. 80, *post*).

Reduction and increase of security.

When and how obtainable.

Where by bond.

Where by payment into Court.

An application by a committee to have his bond delivered up, and to change the security by giving greater, will not be readily granted, for if, when the bond was given up, no account had been rendered of part of the property, there would be no remedy for the lunatic, should he afterwards recover, but from the time when the last bond was taken.[4] As a precaution against this danger, however, the Master may, on a change of security, require the account to be passed to a day immediately antecedent to the discharge to be fixed by him.[7]

Change of security.

[1] Elmer, 6th ed., p. 72; and see note to *re Lacy*, 1822, 10 Price, at p. 136.

[2] Ersk. Inst. 202 n.

[3] *Ex parte Grimstone*, 1772, Ambl., at p. 707. In *ex parte Roberts*, 1746, 3 Atk. 308, the execution of a reconveyance was enforced by attachment.

[4] Cp. *ex parte Pereira*, 1755, 2 Ves. sen. 673; *re Palmer*, 1828, Shelf. Lun. 196.

[5] Cp. r. 19 of the Rules in Lunacy 1892, *post*. As to preparation, etc., of summonses, rr. 93-99, *ib.*, *post*.

[6] Cp. *ex parte Northleigh*, 1755, 2 Ves. sen. 673.

[7] Elmer, p. 78.

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Security may be changed by the substitution of payment into Court for a bond, or *vice versâ* (cp. rr. 71, 72, Rules in Lunacy 1892, *post*, and rr. 2 and 9, Rules in Lunacy 1893, *post*).

As to alteration of security in cases where a receiver has been appointed, see *post* p. 363.

Discharge of security When.

Discharge of the security.—The security is discharged on the death of the lunatic, the supersedeas of the commission (*v. ante* p. 320), the discharge or death of the committee of the estate,[1] and the substitution of fresh security (*v. sup.*).[2]

As to the amount of the security, see notes to Rules in Lunacy 1892, r. 70, *post*.

Not till accounts passed.

The security will not be discharged till the accounts have been passed (see *post* p. 357). The discharge is effected by the delivery up of the bond for cancellation, or the making of an order by the Master for

How effected.

the payment or transfer of the fund out of Court, according to the form of the security (Rules in Lunacy 1892, r. 82, *post*; and cp. Supreme Court Funds Rules 1894, rr. 44 *et seq.*).

As to discharge of security where a receiver has been appointed, see *post* p. 362.

2. Management of estate.

2. *Management of the estate.*—This subject is fully dealt with *post* pp. 403 *et seq.*

3. Passing of accounts. How often.

3. *The passing of the accounts.*—The committee of the estate is required annually, or at such longer or shorter periods as the Master fixes, to pass his accounts of receipts and payments in respect of the estate of the lunatic (r. 73, Rules in Lunacy 1892). In some old cases, where the property of the lunatic was small, or where it consisted of funds in Court, the Court has, on application, dispensed with the general rule requiring committees to pass their accounts;[3] and in other cases[4] it has been referred to the Master to consider the propriety of passing altogether the accounts of committees for several years, and they have been ordered to be passed accordingly if the Master approved. Whenever, from any cause, it is found inexpedient to pass the accounts regularly, an application ought to be made, not it would seem to the Master, but to the Court, in the first instance for liberty to dispense with the general rule, and the Court will then exercise its discretion on the subject.[5]

Procedure when inexpedient to pass regularly.

[1] Cp. r. 81 of the Rules in Lunacy 1892, *post*.

[2] Cp. *re Bull*, 1843, 2 Coop. *t.* C. 63, where, on one of the sureties of the committee of the estate becoming lunatic, an order was made, upon the petition of the trustees and executors of the deceased surety, that the committee should enter into fresh security, and in default thereof, that another committee should be appointed.

[3] *Ex parte Pickard*, 1814, 3 V. & B. 127; *ex parte Lacy*, 1808, 1 Coll. Lun. 196; *re Stephenson*, 1814, Shelf. Lun. 238.

[4] *Re Robinson*, 1828, Shelf. Lun. 239; *re James*, 1828, Shelf. Lun. 239. On the death of a lunatic, also, the Master may, if he think fit, dispense with the taking of accounts. The application should be made by summons, supported by an affidavit of death or identity, and the production of probate or letters of administration. Cp. Elmer, p. 106.

[5] *Anon.*, 1829, 1 Russ. & My. 113. Here the committee's accounts had, owing to the smallness of the property, not been passed between 1823 and 1829, and leave was given in the latter year to pass them. But Lord Lyndhurst, L.C., stated the law as above (*re Scarpelain*, 1830, Shelf. Lun. 239).

As to consequences of default of committee in bringing in accounts, see *post* p. 358.

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The practice with reference to the passing of accounts is as follows. A distinction must be drawn between the committee's first, subsequent, and final accounts.

Distinction between first and final accounts.

Practice as to passing accounts.—The committee of the estate leaves his first account, which is usually made up to the end of the first year from the date of the completion of his security, or to the time fixed by the Master, at the Masters' Office within the time fixed by the Master for its delivery, when a time is appointed for the attendance of the committee (and those of the next of kin and such other persons, if any, as the Master has determined shall be at liberty to attend, *v. ante* p. 337) for the purpose of passing the account (r. 73, Rules in Lunacy 1892, *post*). As to attendance of next of kin, etc., and notices to, see *ante* p. 337. As to the general powers of the Master to consolidate matters, and determine what solicitors are to represent third parties, see rr. 42, 43, *post*. The account need not necessarily be, and in practice rarely is, disposed of at the first attendance, for the Master may adjourn it from time to time. But the account should, if practicable, be completed at a single sitting, and for this purpose the appointment will be fixed so as to give sufficient time for all parties interested and entitled to attend to receive notice of it, and to be prepared, and the committee should have all the requisite evidence ready for immediate production.[1] Subject to the general powers of the Master in regard to evidence (rr. 93-99, *post*), the committee has to show from the Master's certificate of the property (see p. 365) that all the property and the income from it is duly accounted for. If any part of the property has been paid into Court, a transcript of the account, which may be obtained at the Pay Office without fee, and which, if desired, may be authenticated at the Audit Office (Supreme Court Funds Rules 1894, r. 100), should be produced; and if there have been any receipts or payments not included in the certificate of property, the committee should be prepared to furnish the Master with an explanation, supported by evidence if necessary, in regard to them. The Master will make to the committee all just allowances, including an allowance of his reasonable and proper costs, charges, and expenses of passing the account, and those of the next of kin and other persons, if any, allowed to attend on the passing of the account at the cost of the estate (r. 73, Rules in Lunacy 1892, *post*). As to the costs allowed to the committee, see *post* p. 359.

First account.

Account left at Masters' Office.

Examination of account may be adjourned.

But should be completed if practicable at single sitting.

Evidence.

Receipts and expenditure to be accounted for.

Allowance.

The committee of the estate is required to satisfy the Master that his sureties (where security was taken by bond, see *ante* p. 352) are living, and that neither of them has been adjudicated bankrupt or has compounded with his creditors; and, in default of such proof, the Master will require him to enter into fresh security[1] within such time as he may fix (r. 75, *post*), and if the committee fail to do this, he may proceed to appoint a new committee (rr. 79, 80, *post*).

Evidence as to sureties.

[1] Cp. Elmer, p. 105. Cp. *re Lacy*, Shelf. Lun. 243.

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Account how passed.

If the Master is satisfied with the committee's account, he allows it to pass. The allowance is signified, and sufficiently authenticated, by the seal of the Masters' Office being impressed upon the account (r. 8, Rules in Lunacy 1893, *post*).[1] The committee's account is then sworn to, and engrossed by the office stationers, and the engrossment when ready is sworn to and left at the Masters' Office.[2] An office copy of the account is then obtained by the committee or his solicitor, and the Master certifies the balance due by the committee, and fixes the time within which it is to be paid into Court. Where the committee of the estate makes default in bringing in his account, or in having the same passed, or in paying the balance certified to be due from him, or in causing the same or any sum of cash in Court to be laid out, paid, or received pursuant to any certificate or direction in that behalf, the Master will, unless good cause to the contrary be shown to him, not only disallow the committee's salary or remuneration, if any, but also charge him with interest[3] at the rate of 4 per cent upon any balance or cash for the time during which the same appears to have been improperly retained or invested (r. 78, Rules in Lunacy 1892, *post*).

Where committee makes default, etc.

Allowance may be refused and interest charged.

It is competent for the committee to bring under the Master's notice any circumstances which he deems an excuse for his delay, and if the Master is satisfied, payment of interest may not be insisted upon.[4] In *ex parte Chumley*,[3] where the committee kept the management of the savings of the estate in his own hands, Lord Eldon, L.C., indicated that it might be an excuse if it appeared that he had made a provident use of them.

Other remedies against defaulting committee.

In addition to the penalties mentioned in the rule above stated, a defaulting committee may be removed from office,[4] deprived of his costs,[5] or even attached for contempt.[6]

Payment of balance.

The certificate is filed in the Masters' Office, and an office copy of it is taken and left with the Paymaster-General, who will give directions for the lodgment and investment of the balance in the manner indicated in the Supreme Court Funds Rules 1894, rr. 29 *et seq.*, and rr. 69 *et seq.* The committee of the estate must pay in

[1] Repealing r. 77 of the Rules in Lunacy 1892, by which the allowance was signified under the hand of a Master, and written under the account.

[2] Elmer, p. 107.

[3] Cp. *ex parte Catton*, 1790, 1 Ves. jun. 156; *ex parte Clarke*, 1791, *ib.* 295 (*a*). Interest will be charged to a committee who takes upon himself the management of the savings of the estate, although he makes no personal use of them (*ex parte Chumley*, 1790, 1 Ves. jun. 156), and although all parties are satisfied with his conduct (cp. *Fletcher* v. *Dodd*, 1789, *ib.* 85), unless the rule is relaxed under particular circumstances (*ex parte Hall*, 1821, Jac. 160). The rule stated in the text applies to receivers equally with committees (cp. r. 84, Rules in Lunacy 1892, *post*; *Fletcher* v. *Dodd*, *ubi sup.*, and *Anon.* v. *Jolland*, 8 Ves. 72). Under the old practice receivers were sometimes charged interest at 5 per cent (G.O. 23rd April 1796, 15 Ves. 278; *Potts* v. *Leighton*, 1808, 15 Ves. 274; *re Webb*, 1831, Shelf. Lun., ed. 1833, 174). In some cases the Master has been directed to make annual rests for the purpose of calculating the interest on balances (cp. *re Middleton*, 1826, Shelf. Lun. 239, and *re Lewis*, 1813, *ib.*).

[4] *Re Lockey*, 1845, 1 Ph. 509.

[5] *Ex parte Clarke*, 1791, 1 Ves. jun. 295 (*a*).

[6] *Re Owen*, 1812, Shelf. Lun. 240.

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the balance within the time fixed by the Master; and the balance so paid in is to be laid out in the purchase of such securities for the time being authorised for the investment of cash under the control of the High Court as the Master directs, and the dividends on the securities so purchased and all accumulations of dividends are, unless the Master otherwise directs, when the same amount to a competent sum, to be laid out in like manner without any request for the purpose (r. 76, Rules in Lunacy 1892, *post*).

Same procedure as to subsequent accounts.

The subsequent accounts (not including the final account, as to which see *inf.*) of the committee of the estate are passed in the same manner, except that (1) the payment into Court of the balance on the last preceding account must be proved by the certificate of the Paymaster-General (as to which see r. 99 of the Supreme Court Funds Rules 1894); and (2) the costs of such payment in should be brought in and included in every account passed.[1]

But proof of payment into Court of balance of last preceding account necessary.

And costs of such payment to be included.

As to consequences of default by committee, see *post* p. 358.

Final account. When taken.

A final account is taken on the discharge or death of the lunatic. Here again the procedure is substantially identical with that described above in the case of the first account. But there are a few special points which have to be noted.

Special points as to.

If a balance is certified to be due from the committee or his estate, he or his legal personal representatives must pay the same into Court by virtue of the Master's certificate, or otherwise within such time as the Master directs, or in the case of a supersedeas, must pay the same to the person whose lunacy has been superseded, or in the case of the death of the lunatic, must pay it to the lunatic's legal personal representatives (r. 81, Rules in Lunacy 1892).

Balance due by committee.

Notice of the application for payment out must be served on the committee.[2]

As to the consequences of default by a committee, see *sup.* p. 358.

Balance due to committee.

If the Master finds a balance due to the committee or his estate it is, in the case of a discharge, to be paid to him or his legal personal representatives by the new committee out of the lunatic's estate, or in the case of a supersedeas, by the person whose lunacy has been superseded, or in the case of the death of the lunatic, by his legal personal representatives. Upon payment of the balance, if any, or if no balance is found due, or the taking of the account is not required, and may, in the opinion of the Master, be properly dispensed with, the security of the committee is discharged. As to the discharge of the security, *v. ante* p. 356.

Where committee sustains double character.

The final passing of a committee's accounts does not relieve him from liability for moneys received by him in another capacity. Thus where C., a trustee or apparent trustee for A., who was in possession of an estate, was also committee of B., who claimed the estate, and, though perfectly aware of the claim, received the rents and profits and paid them to A., and where on a bill being filed it was decided that the estate belonged to B., C. was held liable to B. for the rents and

[1] Cp. Elmer, p. 106.

[2] *Wright* v. *Chard*, 1859, 4 Drew. 673; *re Wylde*, 1854, 5 De G. M. & G.

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profits so received and paid by him, although the final accounts had been passed.[1]

As to the register of committees and receivers kept by the Master, see r. 74, Rules in Lunacy 1892, *post*.

Receivers of estate, appointment of.

Receivers of the estate. Appointment of receivers.—A receiver may be appointed in any case in which such appointment is deemed expedient (r. 83, Rules in Lunacy 1892, *post*). The cases where such appointments have been made fall under three heads :—

(1) Where suitable committee cannot be found.

(2) Where objection to committee.

(3) Where management of estate difficult.

(1) Where no person suitable for the committeeship can be found [2] who will give the security required (*v. ante* p. 351),[3] or accept the office without remuneration (*v. ante* p. 349) ;[4] (2) where some objection exists to the appointment of a committee in other respects desirable, as, for instance, where the proposed committee resides at a distance from the estate (*v. ante* p. 347),[5] or, although not resident at a distance, is infirm ;[6] (3) where the management of the estate is attended with considerable trouble.[6]

Considerations applicable to appointment of.

The considerations which determine the class of persons proper to be appointed committees of the estate (*v. ante* p. 347) apply in large measure to the appointment of receivers.

Respectability.

Residence.

Preference of family.

The receiver, like the committee, must be a person of respectablity ; he should not be resident at a great distance from the lunatic's estate ;[7] respect should be given to the preference of the family in regard to his appointment ;[8] and persons occupying a position which makes it their duty to call receivers to account, as, for instance, a Master in Lunacy, or the solicitor to the commission, or otherwise interested, are ineligible.[9] Again, the established practice is that the person appointed to the office of either committee or receiver shall be one who can spare sufficient time for the management of the estate,[10] and one against whom the ordinary remedy can be had.[7]

Disqualifications.

Several circumstances of a disqualifying character apply with greater force to a receiver than to a committee of the estate. A receiver should be absolutely disinterested in the lunatic's estate, although the fact that he is interested does not necessarily disqualify him if his appointment is on other grounds desirable.[11] *Cookes* v. *Cookes*,[11] although not a lunacy case, is an interesting instance of a departure from this general rule. C., the proposed receiver, who was approved of by the Vice-Chancellor, was tenant of a farm on the

Interest.

Cookes v. *Cookes*.

[1] *Wright* v. *Chard*, 1859, 4 Drew. 673.

[2] *Ex parte Warren*, 1805, 10 Ves. 621.

[3] *Ex parte Billinghurst*, 1750, Ambl. 104.

[4] *Ex parte Radcliffe*, 1820, 1 Jac. & W. 639 ; and cp. *re Squire*, 1828, Shelf. Lun. 187 ; *re Smith*, 1828, Shelf. Lun. 187. But the expense of a receiver will not be incurred only in order that a person who cannot give security may be appointed committee, *re Frank*, 1826, 2 Russ. 450.

[5] *Re Seaman*, 1808, Shelf. Lun. 187.

[6] *Re Birch*, 1808, *ib.* ; and cp. *re* Laugham, 1837, 1 Jur. 281.

[7] *Wynne* v. *Lord Newborough*, 1808, per Lord Eldon, L.C., 15 Ves., at p. 283.

[8] *Ib.*, and cp. *re Lord Bangor*, 1818, 2 Moll. 518.

[9] *Ex parte Pincke*, 1817, 2 Mer. 452 ; and cp. *Stone* v. *Wishart*, 1817, 2 Madd. 64 ; *A.-G.* v. *Day*, 1817, *ib.*, at p. 254 ; *Taylor* v. *Oldham*, 1822, Jac., at p. 529 ; *Wilson* v. *Poe*, 1825, 1 Hog. 322.

[10] Cp. *A.-G.* v. *Gee*, 1813, 2 V. & B. 208.

[11] *Cookes* v. *Cookes*, 1865, 2 De G. J. & S. 530.

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estate; he was also lessee of a right of sporting over it, and a keen sportsman. Disputes had arisen with the family over the farm, and it was alleged that this circumstance, together with the probability that his interest in the preservation of the game would bring him into conflict with the tenants, and induce them to give up their holdings, disqualified him for the receivership. The Court regarded the former point as of no importance, but considered the latter objection a serious one. C. was, however, appointed on the grounds (1) that in such cases the discretion of the Court below will not be overruled unless there is some overwhelming objection in point of propriety of choice or in point of principle to the manner in which it has been exercised; (2) that in this case an order had previously been made, without objection, giving C. liberty to propose himself as receiver; (3) that he was willing to act without salary; and (4) that there was no lack of vigilant eyes to see that he was doing his duty.

No remuneration if interested in the estate.

Again, it is ordinarily insisted upon that a receiver, if interested in the estate, should be willing to act without salary, inasmuch as the *raison d'être* of a receiver's appointment is in very many cases the inability of the parties or the Master to find any suitable person who is willing to act without remuneration. The reluctance of the Court to allow remuneration to a committee of the estate applies in such cases with even greater force to a receiver. Even in such cases, however, an allowance may under special circumstances be granted. *Re Laugham*[1] is an instance (and the only one known to the author) in point. There it appeared that the estate of the lunatic was greatly encumbered; that L., who had been approved of by the Master as committee of the estate, absolutely declined to act in this capacity, but was willing to be receiver at a much less than the ordinary allowance; that he had been well acquainted with the nature of the estates from a very early period in his life, and that he was approved by the family of the lunatic. A reference was directed to the Master to inquire whether his appointment as receiver on the terms of the application would be desirable.

re Laugham.

In other cases reasonable salary.

In other cases, however, the person appointed receiver of the estate of a lunatic is to be allowed a proper salary by the Master, unless otherwise ordered by the Judge (r. 83, Rules in Lunacy 1892, *post*).

Appointment of, prior to 1853.

Contrary to the general rule,[2] it seems that a receiver might formerly be appointed of the estate of a lunatic on petition only, without any bill being filed, as was requisite in other cases where receivers were appointed by the Court of Chancery. A simpler method became common in practice[3] under sec. 70 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Under Lunacy Regulation Act 1853.

The appointment of a receiver[4] of the estate of a lunatic

[1] 1837, 1 Jur. 281.

[2] *Anon.*, 1738, 1 Atk. 489; *ex parte Whitfield*, 1742, 2 Atk. 315; *ex parte Mountfort*, 1808-9, 15 Ves. 445.

[3] See Pope on Lunacy, pp. 134-136.

[4] Application for the appointment of an interim receiver must be made in Court.

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How obtained now.

may now be obtained on a summons returnable before the Master (see Form of Summons, Appx. *post;* r. 19, Rules in Lunacy 1892, *post*), supported by evidence that the appointment is necessary,[1] and suggesting the name of the proposed receiver. The Master will then prepare the minutes of the order, if any, which he thinks ought to be made, including the amount of the security which a receiver, unless otherwise ordered, is always required to give (r. 83, Rules in Lunacy 1892, *post*), and the salary, if the Master thinks proper to fix that in the order (*v. post*), to which he is in all proper cases entitled (*ib.*), and bring them, together with the evidence, before the Judge (r. 22, *ib. post*) out of Court (r. 23, *ib. post*), who may approve of, or modify, or refuse to approve of the order. The practice as to the suspension of the order till the security has been perfected, the amount, enforcement, increase, and reduction of the security are *mutatis mutandis* the same in the case of receivers as in that of committees (r. 84, *ib. post*, and see *ante* pp. 351-55).

Security.

There are, however, certain special points as regards the security and the salary of receivers which require notice.

Security by recognisance not bond.

Receivers give security by recognisance, not, like committees, by bond (*v. ante* p. 352.[2] See Form of Recognisance, Appx. *post*). Receivers enter into a recognisance with the two Masters in Lunacy (formerly they entered into one with the Master of the Rolls and one of the Masters in Chancery), and the recognisance is enrolled in the central office of the Supreme Court. Committees, on the other hand, with their sureties, execute a bond to the Queen, which is kept by the Masters in Lunacy. In consequence of the mode in which receivers give security, it was, until the Rules in Lunacy 1893 came into force, the practice, when the security of a receiver was to be discharged, for the Master by certificate to direct the Clerk of the Enrolment Department to attend the Master of the Rolls with the enrolment of the recognisance to be vacated (see r. 82, Rules in Lunacy 1892, *post*). Under r. 9 of the Rules in Lunacy 1893, *post*, however, when the security of a receiver is to be discharged, the proper officer, upon a direction from a Master, attends the Masters, who vacate the recognisance in the usual manner. It would seem (see r. 84, Rules in Lunacy 1892, *post*) that security be taken from a receiver, as well as from a committee (*v. ante* p. 354), in the shape of payment into Court.

Discharge of security.

Payment into Court.

Amount of allowance.

According to Lord Langdale, M.R., in *Day* v. *Croft*,[3] the allowance to a receiver in his time was generally 5 per cent of the amount received where the property consisted of freehold or leasehold estates. But there is no settled rule on the subject. The question is one for the discretion of the Master in view of the circumstances of each case, and in particular of the trouble and difficulty involved in the collection of the rents and profits. The salary of a receiver may be fixed by the order appointing him. But the general practice is not

[1] *Middleton* v. *Dodswell*, 1806, 13 Ves. 269.

[2] Cp. Coop. *t.* C. 63, notes (*a*) and (*b*). In *ex parte Warren*, 1805, 10 Ves. 622, a receiver was ordered, however, to give the same security as a committee.

[3] 1840, 2 Beav. 491.

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to settle it until the passing of the first account, when the receiver will be allowed either a percentage on his receipts or a gross sum by way of salary. Under special circumstances an order has been made that the receiver should be allowed such sum as was reasonable on the passing of each account.[1]

Where committee and receiver appointed.

If a committee of the estate is appointed as well as a receiver, the committee is restrained by the order from receiving any part of the lunatic's money, and gives nominal security only;[2] but it seems that questions relating to the estate of the lunatic should in such cases be submitted to the Court by, or in any event with the concurrence of, the committee, and the costs occasioned by a neglect of this rule on the part of a receiver may be visited upon him.[3]

Duties of receivers. Pay money received into Court. Obtain consent to extraordinary expenditure.

The duties of receivers.—See generally on this subject Kerr on Receivers, chap. vii. The duty of a receiver is generally a very plain one, viz. to pay into the Court, or as the Court may direct, the money he receives, and to expend nothing extraordinary without an order of Court.[4] A receiver has very little discretion allowed him. He must apply to the Court for liberty to bring[5] or defend[6] actions, or let the estate,[7] and in most cases even to be allowed to lay out money in repairs.[8]

May incur ordinary expenditure without sanction.

There are, however, a number of cases in which a receiver has been allowed the costs of repairs of a simple, inexpensive, and

[1] *Wells* v. *Wales*, 1855, 4 De G. M. & G. 816; and *Neave* v. *Douglas*, 1857, 26 L.J., N.S., Ch. 756.

[2] *Re Billinghurst*, 1750, Ambl. 104.

[3] *Re Doolan*, 1843, 2 Con. & L. 232, where application by the receiver is declared to be improper unless the committee, on being applied to, declines to come forward; and *re Earl of Kilkenny*, 1845, 7 Ir. Eq. 594, where in one part of the judgment the concurrence of the committee is impliedly stated to be sufficient.

[4] Cp. *Fletcher* v. *Dodd*, 1789, 1 Ves. jun., per Lord Eldon, L.C., at p. 85.

[5] *Wynne* v. *Lord Newborough*, 1790, 1 Ves. jun., at p. 165; *Ward* v. *Swift*, 1848, 6 Ha., at p. 312; and cp. *Mansfield* v. *Hamilton*, 1804, 2 Sch. & Lef. 28; and *re Montgomery*, 1828, 1 Moll. 419, where a receiver proceeding in a wrong form of action which he was advised to abandon and adopt another form of action in which he succeeded, was refused the costs of the abandoned proceeding, although the Master reported that he had acted *bonâ fide* and ought to be allowed the costs.

[6] Cp. *Anon.*, 1801, 6 Ves. 287; and *Swaby* v. *Dickon*, 1833, 5 Sim. 629, where a receiver having, without the sanction of the Court, defended actions arising out of a distress for rent made by him on a tenant of the estate (as to distress see *inf.* p. 364) the Court refused to allow him his costs of the action. But see *per contra*, *Bristowe* v. *Needham*, 1847, 2 Ph. 190. It is the duty of the persons beneficially interested, not of the receiver, to make such applications to the Court as may be requisite for protecting the possession, and if the possession of tenants under a receiver is disturbed, and no application is made to the Court to prevent that disturbance, the tenant is entitled to the costs of protecting his own possession (*Miller* v. *Elkins*, 1825, 3 L.J. Ch. 128).

[7] Per Lord Eldon, L.C., in *Morris* v. *Elme*, 1790, 1 Ves. jun., at p. 138 (*a*); and cp. *Fletcher* v. *Dodd*, *ubi sup.*

[8] *Ex parte Marton*, 1805, 11 Ves. 397; *ex parte Hilbert*, *ib.*; *ex parte Hall*, 1821, Jac. 160. Cp. *Fletcher* v. *Dodd*, *ubi sup.* note (53); *Blunt* v. *Clitherow*, 1802, 6 Ves. 799; *Cross* v. *Omerod*, 1801, *ib.* 800; *Garland* v. *Garland*, *ib.*, where the order was refused owing to the persistence of the receiver in expending large sums after prior sums had been allowed him, with a caution from the Master not to lay out any more; and *re Newport*, cited in 2 Ves. jun., 72. See also *A.-G.* v. *Vigor*, 1805, 11 Ves. 563; *Tempest* v. *Ord*, 1816, 2 Mer. 55 (for form of order see Appendix, *post*); *Waters* v. *Taylor*, 1807, 15 Ves., at pp. 25, 26.

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necessary character made without a previous order, the practice being to direct an inquiry whether the transaction was for the benefit of the parties interested.[1] It is stated to be the general rule that a receiver should not expend on repairs more than £30 a year without the sanction of the Judge.[2] It seems also that a receiver may now grant at his discretion for a year certain, or less, or for any time not exceeding three years, such parole leases as come within the Statute of Frauds.[3]

Wider discretion where property abroad.

It should be added that a wider discretion both as to expenditure and as to leasing has been given to a receiver where the property is situated abroad.[4]

Determine lease.

A receiver may presumably determine a lease;[5] and it seems that he might apply either personally or by the committee of the estate, if there be one, for liberty to let again before an old lease expires. If he neglect to do this, although he will be allowed to make what he can of the estate during the current year, any loss incurred by his default will be visited upon him.[6]

Relet before lease expires.

Distrain for rent.

A receiver may distrain for rent in his own name without the leave of the Court, if the tenant has attorned to him, and so created the relation of landlord and tenant between them,[7] since it is his duty to get in the rents, and if the authority of the Court were necessary before he could recover rent in arrear, the tenant would be able to remove his distrainable property before the order for distress took effect.[8] As to procedure for obtaining leave to distrain, see Kerr on Receivers, p. 161. If the tenant has not attorned, the receiver can compel him to do so,[9] or obtain an order on motion, or summons with notice to the tenant for payment — a course which is also open to him even if the tenant have attorned—or he may move that he have liberty to distrain in the name of the party having the legal estate.[10] If there is any doubt as to who has the right to the legal estate, a summons for directions should be taken out.[11] In *Brandon* v. *Brandon*,[8] Sir John Leach, V.-C., stated on the authority of the Registrar that the practice was for a receiver to distrain upon his own discretion for rent in arrear within the year, but that, if rent was in arrear for more than a year, then an order was necessary. It is pointed out by Mr. Kerr[12] that this was a case in which the legal estate was in trustees, and a motion was made that the receiver might be at liberty to distrain in their name. In so far, therefore, as

Compel attornment.

Brandon v. *Brandon*.

[1] *Ubi sup.* p. 363, note 8.
[2] Dan. Ch. Pr. 1700 n.; Kerr, 171, 172.
[3] *Shuff* v. *Holdaway*, 1863, Dan. Ch. Pr. 1699; Kerr, 166.
[4] *Morris* v. *Elme*, 1790, 1 Ves. jun., 138 (*a*); —— v. *Lindsey*, 1808, 15 Ves. 91.
[5] *Doe* v. *Read*, 1810, 12 East 57.
[6] *Wilkins* v. *Lynch*, 1823, 2 Moll. 499.
[7] *Evans* v. *Mathias*, 1857, 7 E. & B., at p. 601. This case may also be consulted as to what constitutes an attornment; and cp. *Dancer* v. *Hastings*, 1826, 4 Bing. 2.
[8] *Pitt* v. *Snowden*, 1752, 3 Atk. 750, per Lord Hardwicke, L.C.; *Brandon* v. *Brandon*, 1821, 5 Madd. 473; *Bennett* v. *Robins*, 1832, 5 C. & P. 379.
[9] Cp. *Hughes* v. *Hughes*, 1790, 1 Ves. jun. 161; Kerr on Receivers, p. 161.
[10] Kerr, *ubi sup.*
[11] Cp. *Pitt* v. *Snowden*, *ubi sup.*; *Brandon* v. *Brandon*, *ubi sup.*; and cp. Kerr, *ubi sup.*
[12] *Ubi sup.*, at p. 162.

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Where legal estate outstanding.

it is an authority, it must be taken as limited to cases where the legal estate is outstanding, and there has been no attornment to the receiver. In such cases an application to the Court is indeed necessary. But it is rendered so, not by the fact that the rent is in arrear for more than a year, but by the circumstances that the legal estate is in a third party, and that there is no privity between the tenant and the receiver.

Receiver an officer of Court.

A receiver is an officer of Court, and may be called upon to account by summons in Chambers,[1] examined on interrogatories touching his management of the estate,[2] and committed for disobedience to an order of Court.[3]

Removal of committee.

Removal, etc., of committees.—The chief grounds on which a committee of the person or of the estate may be removed from his office, and on which his tenure of the office may cease, are stated in their proper places. It will suffice, therefore, here to enumerate them and refer to the parts of this treatise where each is dealt with.

Grounds of.

1. *Non-residence.*—As to effect of on committee of the person, see *ante* p. 341. On committeeship of the estate, see *ante* p. 347.
2. *Death of the lunatic or supersedeas of the inquisition.*—See p. 359.
3. *Death of the committee.*—See p. 359.
4. *Misconduct of the committee.*—See pp. 345, 346, 358.
5. *Bankruptcy of the committee.*
6. *Application by committee for discharge.*
7. *Expiration of order for commitment of person.*—See sec. 115, *post*, and notes thereon.

(*e*) Lunatic's property.

(*e*) *Of what his property consists, and the particulars thereof.*—This is the next point to be determined by the Master after he has inquired who ought to be appointed committee of the person and of the estate (*v. ante* p. 340)

Inquiry as to debts.

The Master may also, if he deem it expedient, inquire what undisputed debts (if any) are due from the lunatic, and to whom, and whether the same or any of them ought to be paid, and out of what property, and may make orders for the settlement or payment thereof, and for the compromise of any disputed claim against the lunatic or his estate (r. 33, Rules in Lunacy 1892, *post*). This inquiry, if it is instituted, will be held before the inquiry as to maintenance, where the debts are secured or carry interest, or, although simple contract debts, are of large amount, inasmuch as the allowance for maintenance must depend upon them.[4]

Advertisements, as to.

The practice of the Master is to cause an advertisement to be published, and repeated after an interval of a month or six weeks, in the *London Gazette* and such other papers as he approves of, calling upon creditors to come in before him and prove their debts within a time limited in the latter of such advertisements,[5] and creditors not

[1] Cp. *re Burke*, 1809, 1 Ball & B. 74.
[2] *Re Lloyd*, 1794, Shelf. Lun. 240.
[3] *Davies* v. *Cracraft*, 1807, 14 Ves. 143; and cp. *re Grey*, 1892, 2 Q.B. 440.
[4] Elmer, p. 49. If there are only simple contract debts, the inquiry as to maintenance will come first, and even if such debts are large, a provisional maintenance only may be approved of (*ib.*).
[5] Cp. Elmer, p. 49; r. 87, Rules in Lunacy 1892, *post*; and Shelf. Lun. 460.

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Proceedings how far binding on creditors.

taking advantage of this opportunity will be excluded from the benefit of any order that may be made.[1] A creditor is not, however, bound to come in before the Master at such an inquiry,[2] as he would be under a decree,[3] since the object of the inquiry is merely the benefit of the lunatic and of his estate, and he may establish his debt by an action in spite of any order made by the Master on his inquiry,[2] just as he might do in spite of an inquisition,[4] unless he made himself subject to the jurisdiction in lunacy, either by coming in to prove his claim,[5] or by his having intervened, or been employed, in the lunacy,[6] for instance as solicitor to the commission,[7] or as an auctioneer who had acted in the lunacy under the instructions of the solicitor to the commission;[8] and in *re Ball*,[9] a judgment creditor, who employed to recover a debt by execution a solicitor who had acted in some of the proceedings under a commission in lunacy, was held to have intervened within the meaning of the rule above stated. If a creditor is subject to the jurisdiction in lunacy in either of the ways above stated, he may be restrained from prosecuting his claim during the lunacy, should that course appear to the Court to be desirable, and therefore the Statute of Limitations will not run against him during the lunacy.[7] If, however, the claim is disallowed, it would seem that the Statute of Limitations runs from the date of the disallowance.[10]

Debts not paid unless sufficient maintenance for lunatic.

As the inquiry of the Master with reference to a lunatic's debts and liabilities is primarily undertaken for his accommodation, and not for the benefit of his creditors, an order will not be made for payment or discharge of such debts or liabilities unless it clearly appears that a sufficient maintenance will remain or is securely provided for the lunatic. This statement of the law is supported by a long series of authorities ranging from *ex parte Dikes*[11] in 1802 to *re Pink*[12] in 1883.

[1] *Re Davidson*, 1827, Shelf. Lun. 460; *re Kendall*, 1820, *ib.*

[2] Cp. *ex parte M'Dougal*, 1806, 12 Ves. 385.

[3] See a case of this kind in 1 De G. & S. 675, 1847, *Rock* v. *Cooke*.

[4] *Re Anon.*, 1807, 13 Ves. 590.

[5] Cp. *Rock* v. *Cooke*, *ubi sup.*

[6] *Re Ball*, 1828, 2 Moll., per Lord Chancellor Hart, at pp. 145, 146.

[7] *Stedman* v. *Hart*, 1854, Kay 607.

[8] *Re Weaver*, 1837, 2 My. & Cr. 441. In this case, however, the auctioneer had also at first carried in his claim before the Master.

[9] 1828, 2 Moll. 145. *Aliter*, however, in the case of a medical man engaged on behalf of an alleged lunatic to examine him and give evidence on an inquisition (*Brockwell* v. *Bullock*, 1889, 22 Q.B.D. 567).

[10] Cp. *Rock* v. *Cooke*, 1847, 1 De G. & S., at pp. 680, 681, where the date of disallowance was the date from which the quiescence of the creditor was counted.

[11] 8 Ves. 79, and cp. *ex parte M'Dougal*, 1806, 12 Ves. 384; *ex parte Hastings*, 1807, 14 Ves. 182; *ex parte Hall*, 1821, Jac. 160, where the duty of the Court to pay a lunatic's debts was put on the ground of the desirability of protecting him against arrest; *re Railton*, 1837, 1 Jur. 574; *Peters* v. *Grote*, cited in *Edwards* v. *Abrey*, 1846, 2 Coop. *t.* C., at p. 194; *re Adey*, 1846, 1 Coop. *t.* C. 225; *re Tayler*, 1841, cited in *Tayler* v. *Tayler*, 3 Mac. & G. 427; *re Sitwell*, 1881, W.N. 1881, 124, where, however, the maintenance of the lunatic's children was postponed to the claims of the creditors.

[12] 23 Ch.D. 577. The principle which it illustrates, viz. that in the administration of the estate of a lunatic in Court, or under the protection of the Judge in Lunacy, the interest of the lunatic is the primary consideration, was corroborated in a striking though indirect manner in *re Fountain*, 37 Ch.D. 609, where the Court appointed a receiver to protect the property of a lunatic not so found by inquisition against, *inter alia*, execution by a judgment creditor.

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A certain degree of doubt as to whether this rule was still intact appears to have been raised, although without any real justification, by the decisions in *Horne* v. *Pountain*,[1] and *re Leavesley*.[2] In the former of these cases it was held by the Divisional Court that the statutes 1 & 2 Vict. c. 100, sec. 14, and 3 & 4 Vict. c. 82, sec. 1, gave the Judge in Chambers no power to make an order that the amount of a charging order on a fund standing in Court to the credit of a debtor, described as "a person of unsound mind," should be determined by the Lords Justices sitting in Lunacy, but that the creditor was entitled to an unconditional order on a specified amount of the fund. In the latter, creditors of a lunatic, whose debts were incurred before the lunacy, after the lunacy obtained judgment against him, and also orders charging a fund in Court with the amounts of their respective judgments, which orders were not in terms enforceable till the death of the lunatic or further order. The lunatic died insolvent, and upon an application by his administratrix for payment out of the fund, it was held by Lindley and Kay, L.JJ., that the charging orders were valid and effective, and that the judgment creditors were entitled to be paid the several amounts due thereon respectively out of the fund, before transfer of any part of it to the administratrix. The difficulty created by these decisions has, however, been satisfactorily removed. In *Horne* v. *Pountain*[1] the Lords Justices subsequently refused to make any order for payment to the judgment creditor;[3] and in *re Plenderleith*,[3] Lord Justice Lindley, with whom the other members of the Court concurred, explained that the decision in *re Leavesley*[3] was based on the fact that the lunatic was dead, and reaffirmed the principle of the older cases emphatically. "The moment," said his Lordship, "a lunatic's property is subject to the jurisdiction of this Court in Lunacy, this Court has to determine how that property is to be applied, and rule 30 (now r. 31) empowers the Master to inquire what debts are due, and whether they ought to be paid. In considering this question, not only the rights of the creditors, but the benefit of the lunatic, have to be considered; and if the creditors cannot be paid without invoking the aid of the Court in Lunacy, the Court has always refused such aid, if to grant it would be to reduce the lunatic to the condition of a pauper."

Doubt as to rule raised by *Horne* v. *Pountain*.

re Leavesley.

Removal of difficulty.

re Plenderleith.

There is nothing to prevent the creditors of lunatics, unless subject to the jurisdiction in lunacy, from suing them and obtaining judgment against them, and from afterwards obtaining charging orders against their stocks, shares, and securities. But such charging orders do not deprive the Court in Lunacy of its jurisdiction.

[1] 1889, 23 Q.B.D. 264.

[2] 1891, 2 Ch. 11.

[3] Cp. *re Leavesley*, *ubi sup.*, *arg.* at p. 3; and *re Plenderleith*, 1893, 3 Ch., per Lindley, L.J., at pp. 334 and 336. "From a note in (the Registrar's) book," said Lord Justice Lindley, "it appears that the order sought to be enforced may have been the order made in Chambers, and not the order as rectified by the Divisional Court. But inasmuch as the Lord Justices had before them the order of the Divisional Court, which is recited in their own order, I cannot think that their refusal to order payment was based upon so technical a mistake, which might have been at once put right by an amendment."

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They remain for what they are worth. If the lunatic dies or recovers, they may become available. But their existence does not deprive the Court of its power to dispose, for the benefit of the lunatic, of the funds under its control and belonging to him when the charging orders were obtained.[1]

If lunatic's estate sufficient, moral obligations even recognised.

If the estate of the lunatic is sufficient, however, not only the claims of creditors but debts which are morally, though not legally, binding on the lunatic may be allowed. Thus, where a lady who had separate property and had been found lunatic, was under a moral obligation to give her nephew a sum of £500, and had paid part of it before her lunacy, and her husband had paid another part after her lunacy, the executors of the husband were allowed to deduct the money so paid by him, before paying over the separate income of the wife to her committees.[2] And in a later case,[3] where W., a lunatic, had, while sane, given a promissory note for £50,000, payable in instalments of £5000 each, to H., in discharge of what he deemed a moral obligation, arising out of the fact that by the sudden death of L., leaving a will unexecuted, a very large fortune had come to him which was apparently intended for H., and had paid 3 of such instalments, the Court ordered the balance of £35,000 to be paid by way of bounty. "Debts of honour," in the sense of gambling transactions, would not, however, receive recognition.[4]

Committee party, or applicant.

The committee ought to be joined as a party in applications for the payment of sums in discharge of moral obligations,[5] and ought to be the applicant for payment of debts.[5]

Death of lunatic, effect on inquiries.

The effect of the death of the lunatic upon inquiries as to his debts and liabilities is involved in some obscurity. Formerly it seems that an order for payment of debts could be made on a petition presented [6] or a certificate made [7] before, but not on one presented or made after [8] the death of the lunatic. Probably, now, the Master would discontinue the inquiry,[9] and leave the creditors to their legal remedies.[10]

Under the head of debts and liabilities the Master may also inquire as to dealings with the lunatic's estate before inquisition (r. 34, Rules in Lunacy 1892, *post*), and as to property of the lunatic out of the jurisdiction (r. 35, *ib. post*).

(*f*) Amount of income.

(*f*) *The amount of his income.*—This head of inquiry does not require any elucidation.

[1] See per Lindley, L.J., in *re Plenderleith, ubi sup.* p. 367, n. 3, at pp. 335, 336.

[2] *Re Hewson*, 1852, 21 L.J., N.S., Ch. 825.

[3] *Re Whitaker*, 1889, 42 Ch.D. 119.

[4] See *ib.*, per Lindley, L.J., at p. 128: "The unpaid balance is a debt of honour, not in the sense of a gambling debt, which I consider as a debt of dishonour, but a debt of honour which this Court ought to recognise if it can with justice do so."

[5] *Re Townshend*, 1865, 2 De G. J. & S., at p. 520; *re Weld*, 1882, 20 Ch.D., at p. 462; *Brockwell v. Bullock*, 22 Q.B.D. 567.

[6] *Ex parte Grimstone* 1772, Ambl. 706; *ex parte M'Dougal*, 1806, 12 Ves. 385.

[7] *Ex parte Armstrong*, 1791, 3 B.C.C. 238; and cp. *re Roberts*, 1746, 3 Atk. 308; *re Singleton*, 1858, 8 Ir. Ch. Rep. 263.

[8] *Garnet's case* and *Pochin's case*, cited 12 Ves. 385.

[9] *Re Way*, 1861, 3 De G. F. & J., at p. 176.

[10] Cp. *Wigg* v. *Tiler*, 1779, 2 Dick. 552; *re Humpleby*, 1831, cit. 2 De G. F. & J., at p. 380 note (*a*).

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(*g*) *In what manner and at what expense, and by whom and where, he has been maintained, what should be allowed for his past maintenance; what, if anything, is due, and to whom in respect thereof, and to whom and out of what fund the same ought to be paid.*—The past maintenance of a lunatic may have been undertaken either with an intention on the part of the person maintaining him to be repaid or voluntarily. In the former case an obligation will be implied on the part of the lunatic to repay out of his estate the sums so expended, though the question whether such sums were necessaries or not must be determined according to the circumstances in each particular case,[1] and the Statute of Limitations of course applies. This subject is discussed at p. 15. In the latter case, the allowance will be limited to advances made within six years by analogy to the Statute of Limitations.[2]

(*g*) Past maintenance.

When obligation implied to repay for.

(*h*) *What should be allowed for future maintenance, when the allowance ought to commence, and out of what fund it should be paid.*

(*h*) Future maintenance.

As to provision for maintenance in cases of temporary insanity, see sec. 127, *post*, and notes thereon.

The amount of the allowance.—The primary point to be considered in determining the amount of the allowance for maintenance is the comfort of the lunatic himself,[3] and as liberal a sum will be allowed as his resources admit of,[4] without any special regard to the claims of next of kin or expectants,[5] or even creditors.[6] The maintenance of a lunatic is not limited like that of an infant within the bounds of income. It is not limited except by the fullest comforts of the lunatic. Fancied enjoyments and even harmless caprice are to be indulged up to the limits of income, and for solid enjoyments and substantial comfort the Court will, if necessary, go beyond the bounds of income.[7] It seems that the Master is obliged to,[8] and in practice he does,[9] inquire as to the tastes, amusements, and occupations of the lunatic, and the places of residence and the care and custody that will be most conducive to his recovery or comfort.

Amount of.

Comfort of lunatic chief consideration.

What comfort includes.

The allowance for maintenance may, of course, be increased where part only of the income was originally allowed,[10] or where the original income itself was increased,[11] if the allowance is insufficient. After a

Increase of allowance.

[1] *Re Rhodes*, 1889, 1890, 44 Ch.D. 94; and cp. *re Weaver*, 1882, 21 Ch.D. 615; and *re Newbegin's Estate*, 1887, 36 Ch.D. 477.

[2] *Re Weaver*, *ubi sup.*, at p. 620.

[3] *Dormer's case*, 1724, 2 P.W. 265; *Brodie* v. *Barry*, 1813, 2 V. & B., per Lord Eldon, L.C., at p. 39.

[4] *Ex parte Chumley*, 1771, 1 Ves. jun. 296.

[5] *Ex parte Baker*, 1801, 6 Ves. 7; *Smith v. A.-G.*, cited *arg.* 2 Mer., at p. 101; *re Lanesborough*, 1845, 7 Ir. Eq. 606; *re Evans*, 1882, 21 Ch.D., per Jessel, M.R., at p. 299.

[6] See cases *sup.* p. 366.

[7] *Re Persse*, 1828, 3 Moll. 94, per Lord Chancellor Hart; and cp. *Sheldon* v. *Fortescue-Aland*, 1713, 3 P.W. 110.

[8] *Ib.*, *ubi sup.* note 7.

[9] Elmer, p. 23.

[10] *Re Creagh*, 1838, 1 Dr. & Wal. 323.

[11] *Ex parte Chumley*, 1791, 1 Ves. jun. 296; *ex parte Baker*, 1801, 6 Ves. 8; *re Melhuish*, 1853, 1 W.R. 236, where an order for an inquiry as to the desirability of an increase was made by the Court without application to it for that purpose. And see *re Liebenrood*, 1842, 6 Jur., at p. 721, where an allowance for the maintenance of a lunatic previously directed to be paid was ordered to be continued by the Accountant-General, without any deduction in respect of income tax.

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Payments out of surplus to relatives.

Whom lunatic bound to support.

committee of the person has been appointed, and proper provision has been made out of the lunatic's property for his personal wants and comforts, the Court may sanction payments out of the surplus for the maintenance of persons whom he is legally bound to support. Such allowances are made in pursuance of the statute *de Praerogativâ Regis* (17 Edw. II. c. 10), which requires the sovereign to maintain not only the lunatic, but his household out of the profits of his estate.

Practice extended to cases where no legal claim, when.

The practice of making allowances to a lunatic's household, for which he was legally bound to provide, has been extended to relations and others who had no claim upon him, but in whom he had shown himself to be interested, and whom it is considered probable that he, if sane, would have benefited. The departure in this direction was first made by Lord Chancellor Thurlow in *re Cotton*,[1] and the precedent has been followed and extended by his successors. The grant of these two kinds of allowances rests, however, to some extent on different principles. It is true that in both cases the Court pays a primary regard to the benefit of the lunatic. It is for the benefit of the lunatic that his legal obligations should be discharged, and that his family should be maintained and educated in a proper manner. It is not for his benefit that moral obligations, whose repudiation would be disgraceful or *discreditable*, should be set aside.[2] But in making provision for those who are legally dependent on a lunatic, the Court is merely complying with the letter of the statute *de Praerogativâ Regis* (17 Edw. II. c. 10). In making allowances to collaterals and others who have no legal claim on the lunatic, the Court acts on the principle that it may, if it thinks fit, do that which the lunatic would have done himself if he had been of sound mind.[2] The grant of such allowances is entirely at the discretion of the Court, and this discretion will be exercised with the utmost jealousy and caution.[3]

Principle on which Court acts.

Moral obligations recognised.

The moral obligations which the Court has met, although no legal obligation to satisfy them existed, may be grouped under a few heads :—

I. Family claims.

Adult children.

1. *Family claims and claims arising from relationship.* — Thus money belonging to a lunatic has been directed to be applied for the maintenance and advancement in life of adult sons,[4] for the maintenance[5] of daughters, whether married or unmarried, and the outfit of daughters about to be married,[6] and even for the payment of the

[1] Cited 2 Mer., at p. 100 n. (*a*).

[2] Cp. per Jessel, M.R., in *re Evans*, 1882, 21 Ch.D., at p. 300, and *Tweddell* v. *Tweddell*, 1822, T. & Russ., per Lord Eldon, L.C., at p. 13.

[3] Per Bowen, L.J., in *re Darling*, 1888, 39 Ch.D., at p. 212; and cp. *ex parte Whitbread*, 1816, 2 Mer. 99; *re Blair*, 1836, 1 My. & Cr. 300; *re Evans*, *ubi sup.*; *re Darling*, *ubi sup.*

[4] *Re Alderson*, 1808, Shelf. Lun. 202; *re Jessop*, 1808, *ib.*; *re Watts*, 1828, *ib.* 203; *re Freak*, 1830, *ib.* 210.

[5] *Re Le Heup*, 1828, *ib.* 202.

[6] *Re Drummond*, 1836, 1 My. & Cr. 627; *re Baker*, 1830, *ib.*, at p. 631 note (*a*); *re Craven*, 1830, *ib.*; *re Goldsmid*, 1830, *ib.* In the two former cases the lady had attained the age of twenty-one, in the last she was an infant. *Ex parte Fowler*, 1842, 6 Jur. 431. *Semble*, that such an allowance will not be made unless the daughter make a settlement, to be approved by the Master, of all the property that may eventually come to her as next of kin of the lunatic. In all the

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debts of adult children.[1] Allowances have also been repeatedly made to the next of kin of a lunatic.

Next of kin.

Thus in *re Blair*[2] payments were ordered out of the estate of a female lunatic who was advanced in years, incurable, and, to all appearances, incapable of enjoying greater comforts than were already provided for her, for the better maintenance and support of her two nephews, the only remaining next of kin consenting. In *re Croft*[3] an allowance of £100 a year was made to a first cousin, and one of the two only next of kin of a lunatic—the committee and other next of kin consenting — under special circumstances. The lunatic had a clear annual income of between £1200 and £1300, as in *re Blair*,[2] was aged and incurable, and had already all the comforts which he was, or was ever likely to become, capable of enjoying. The first cousin was seventy-four years of age, destitute of means, subsisting on the charity of friends, and resident in Wirtemberg, where there was no public provision for the maintenance of the poor. There was no evidence to show what, if any, terms of intimacy existed between the lunatic and his indigent relative, and the allowance — which Turner, L.J., said was not to be treated as a precedent—was made on the principles above stated as determining the action of the Court in such cases, viz. that the Court might do what presumably the lunatic, if sane, would have done, and that it was not for his benefit that so near a relative should remain in utter penury and destitution. *Re Clarke*[4] was another case of a special character. A lunatic forty years old and unmarried had a net income of £2760. He had a father and mother, two brothers, and a sister living with her father. The father had been compelled by age and infirmity to resign a lucrative appointment. Both brothers were married and had increasing families, with incomes of about £230 each. Under these circumstances, Lord Lyndhurst in 1844 made an allowance of £1270, divided as follows: £470 for the lunatic, the nature of the malady being such that no greater allowance could contribute to his comfort; £350 for the father, £350 for the elder brother, and £100 for the younger. On the death of the father the allowance was ordered to be continued at £1270, the father's portion being distributed in the following proportions: £150 to the elder brother, £100 to the younger, and £100 to the sister. This latter order was made, however, solely on the ground that the redistribution had been made indirectly by the authority of a distinct order of Court (*i.e.* Lord Lyndhurst's order in 1844), the limits of which had not been exceeded, and Lord Chancellor Cottenham said that the case was not to be drawn into a precedent. In spite of the reluctance of the Courts, however, the practice of making payments out of a lunatic's estate to persons not legally dependent on him was gradually

Nephews.

First cousin.

Father and brothers.

cases enumerated in this note the Master was directed to receive and approve proposals for a settlement. See form of order from *re Drummond*, Appx. *post*.

[1] *Re Medhurst*, 1808, Shelf. Lun. 154.
[2] 1836, 1 My. & Cr. 300.
[3] 1862, 32 L.J., N.S., Ch. 481.
[4] 1844, 1847, 2 Ph. 282.

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Collateral relatives.

extended. In *re Frost*[1] small weekly allowances were ordered to be paid out of the surplus income of a lunatic who was fifty-nine years of age, had an income of about £4500, and an allowance of £620 for maintenance, to needy collateral relatives who were supposed to be her next of kin (no other persons having appeared in answer to the usual advertisements), though their title as such had not been established. The lunatic had, however, whilst sane, expressed some intention of making provision for them. The high-water mark was reached in *re Mackenzie*,[2] where allowances were ordered to be continued out of the surplus income of a lunatic to certain poor members of her family, and to certain other persons, which the husband of the lunatic, and after his death the lunatic herself, had been accustomed to make, though the surplus income after payment of them amounted to about £50 only. But the allowances were continued only until further order, and were ordered to commence at the date when the lunatic was so found, and not when they stopped in consequence of her becoming of unsound mind.

re Evans.

In the latest cases the principle that allowances out of a lunatic's estate are not to be made to collaterals without the strictest caution has been not only affirmed but carried into effect. Thus in *re Evans*,[3] the income of a lunatic being much more than was required for his maintenance, a respectable aged clergyman, a first cousin and one of the next of kin of the lunatic, who had been reduced to indigence by unavoidable misfortune, applied for an allowance out of the surplus income. It was not shown that the lunatic had even known of the existence of the applicant, or had, when sane, ever done anything for him, or expressed any intention in his favour. The committee, who was one of the next of kin, presented a petition in his favour, but the other next of kin opposed. The application was refused. "We are not entrusted," said Jessel, M.R., "with the sign manual in order to enable us to apply the income of lunatics for the benefit of their poor relations." The decision in this case may perhaps be distinguished from that in *re Croft*,[4] which, however, Turner, L.J., expressly said was not to be taken as a precedent, on the grounds that there all parties assented to the order, and the applicant was resident in a place where no public provision was made for the poor;[5] and it is distinguishable from *re Frost*,[6] where the lunatic had, whilst sane, expressed an intention in the applicant's favour.

re Darling.

Re Darling[7] was an even stronger case. There the lunatic, who was eighty-two years of age, and whose next of kin were ten cousins, had, while sane, made small allowances to three of them, and after he was found of unsound mind these allowances had been continued by the Court. The Master recommended that weekly allowances of a larger amount should be made to the three cousins, and that weekly

[1] 1870, 5 Ch. 699.
[2] 1881, 43 L.T., N.S., 681.
[3] 1882, 21 Ch.D. 297.
[4] 1862, 32 L.J., N.S., Ch. 481.
[5] Cp. per Jessel, M.R., in *re Evans*, *ubi sup.*, and per Cotton, L.J., in *re Darling*, 1888, 39 Ch.D., at p. 212.
[6] 1870, 5 Ch. 699.
[7] *Ubi sup.*, at p. 208.

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allowances should be made to three others. All these persons were in very poor circumstances, and some of them had difficulty in obtaining the necessaries of life, and after payment of all the allowances there would still be a surplus income of £545 a year. Moreover, there was no opposition. The Court refused the application. It should be noted that here the Court refused to draw, from the fact that the lunatic had, while sane, made certain small allowances to some of the applicants, the inference that he would have sanctioned an increase in these allowances and the grant of others.

Allowance to collateral who is head of lunatic's family.

The Court may make an allowance to a collateral who is the head of the lunatic's family, and probable heir to his property, though the next of kin oppose.[1] Such allowances are made on the assumption that the Court is doing what the lunatic himself would have done, if sane, in favour of the person who occupies the position, and has the prospects above mentioned. An allowance of this kind has, however, been refused where it appeared that the surplus income of the lunatic was required for several contingent expenses, as renewing leases of his property, and that the lunatic every other day was capable of expressing his wishes in regard to his property.[2]

Illegitimate children.

An allowance may be made[3] or increased[4] for the purpose of providing for the illegitimate children of a lunatic whether he has,[5] or has not,[6] expressed an intention in their favour while sane. But this rule does not apply to the mother of a lunatic's illegitimate children,[7] or to the illegitimate children of a deceased brother to whose support the lunatic would probably have contributed if not in a state of incapacity.[8]

Allowance personal.

An allowance made to a relative of a lunatic is personal, and must be applied to the purpose for which it is given. It is not to be anticipated or assigned.[9] Nor have creditors any claim upon it. "It is given to (the relative) in order to enable him to live in a respectable manner."[10]

2. Claims from service.

2. *Claims arising from service.*—Thus in *re Carysfort*,[11] an annuity was allowed out of the income of the lunatic's estate as a pension to an old personal servant of the lunatic, who was obliged to retire from his service by reason of old age and infirmity.

3. Charitable claims.

3. *Charitable claims.*—Thus in *re Frost*[12] certain payments to charities to which the lunatic, while sane, and her mother had subscribed were continued. In *re Strickland*[13] a lunatic was tenant for life of about 70 houses in London, all situated in the same neighbour-

[1] *Re Sparrow*, 1882, 20 Ch.D. 320; *re Beridge*, 1884, 50 L.T., N.S., 653, Cotton, L.J., *diss.*

[2] *Re Windsor*, 1831, Shelf. Lun. 209, and cp. *re Lanesborough*, 1845, 7 Ir. Eq. 606.

[3] *Re Jodrell*, 1828, Shelf. Lun. 210; *ex parte Haycock*, 1828, 5 Russ. 154; *Bradshaw* v. *Bradshaw*, 1820, 1 Jac. & W. 647.

[4] *Re Grove*, 1844, 13 L.J., N.S., Ch., per Lord Lyndhurst, L.C., at p. 263.

[5] *Re Jodrell*, *ubi sup.*

[6] *Bradshaw* v. *Bradshaw*, *ubi sup.*

[7] *Re Haycock*, *ubi sup.*

[8] *Re Grove*, *ubi sup.*

[9] *Re Robinson*, 1884, 27 Ch.D. 160.

[10] Per Lord Chancellor Sugden in *ex parte Linehan*, 1844, 1 J. & La. 29.

[11] 1840, Cr. & Ph. 76.

[12] 1870, 5 Ch., at p. 701.

[13] 1871, 6 Ch. 226.

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hood, and producing a gross rental of £2440. His surplus income, after providing him with every comfort, was about £900 a year. Three of the houses were sold to a church building committee as a site for a church to a new district parish, and the incumbent and the church committee solicited subscriptions for building the church and parochial schools in connection with it. Leave was given to the committee of the estate, who was also sole heiress and next of kin, to contribute out of the lunatic's income £250 towards building the church, and a like sum for the schools.

Incidence of burden of maintenance where different titles.

Interest of lunatic determines.

Where no balance of advantage, borne rateably.

Where the property of a lunatic is held under different titles, questions of some intricacy arise as to the incidence of the burden of his maintenance. In the absence of any direction in any document from which any of his titles is derived,[1] the interest of the lunatic alone determines the question of incidence.[2] Accordingly the maintenance of a lunatic may be charged exclusively on one fund or estate, if that arrangement would be most for his benefit.[3] Where there is no balance of advantage to the lunatic one way or the other, the burden of maintenance will be borne rateably.[4] Where a lunatic has property to which he is entitled for life, as well as other property to which he is absolutely entitled, the Court will apply the life-interest first towards his maintenance, unless the trustees have an absolute discretion whether to employ the whole or any part of the income for the lunatic's benefit,[5] in which case the discretion will not be interfered with if it is *bonâ fide* exercised.[6]

Where a married woman, possessed of separate estate, is of unsound mind, and her husband is unable or not compellable to maintain her with proper comfort, the Court may direct the income of her separate estate to be applied towards her maintenance.[7]

As to practice where income is insufficient for maintenance, see notes to sec. 117, subs. (1), *post*.

Liability of committee of person to account.

In case of order for maintenance *simpliciter*.

Liability of committee of person to account for allowance for maintenance.—The orders for maintenance which the Court is in the habit of making are in two forms: (1) an order allowing so much money for maintenance *simpliciter*, and (2) an order—applied very much in

[1] Cp. *Rawlins* v. *Goldfrap*, 1800, 5 Ves. 440.

[2] *Re Ashley*, 1830, 1 Russ. & M. 371; *Method* v. *Turner*, 1851, 4 De G. & Sm. 249; *re Weaver*, 1882, 21 Ch.D., at p. 618; and cp. analogous cases as to infants, *Foljambe* v. *Willoughby*, 1824, 2 S. & S. 165; *Bruin* v. *Knott*, 1845, 1 Ph. 572.

[3] *Re Ashley*, *ubi sup.*

[4] Cp. *Anandale* v. *Anandale*, 1751, 2 Ves. sen. 381, and *Woodhead* v. *Marriott*, 1837, Coop. 64.

[5] *Re Sanderson's Trust*, 1857, 3 Kay & J. 497; *re Weaver*, 1882, 21 Ch.D. 615; *re Stanger*, 1891, 39 W.R. 455.

[6] *Gisborne* v. *Gisborne*, 1877, 2 App. Cas. 300.

[7] Per Lord Eldon, L.C., in *Brodie* v. *Barry*, 1813, 2 Ves. & B., at p. 39. His Lordship added that he could only do this by arrangement. But these words may be disregarded, both because they make the context meaningless (see 2 Coop. *t.* C., at p. 188 note (*b*)), and because there are cases in which such orders have been made: *re Evans*, 1826, 1828, Shelf. Lun. 205; *re Cay*, 1829, *ib.*; *Edwards* v. *Abrey*, 1846, 2 Coop. *t.* C. 177, where, however, the Court refused to allow the sale of part of the *corpus* of the separate property in order to repay to the husband of a lunatic wife, whom he was unable to support, the expenses of past maintenance. No order appears to have been made in *Brodie* v. *Barry*, cp. 2 Coop. *t.* C., at p. 188 note (*a*).

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recent years—which allows to the committee of the person such sum not exceeding a certain fixed amount as shall be applied for maintenance. There is a difference between these forms as regards the result. As a general rule an allowance of a fixed sum for maintenance throws no responsibility on the person to whom it is paid of keeping vouchers or passing an account from time to time as to the items expended for maintenance, and the object of the order in that form is to dispense with such liability to account. On the other hand, an order made in the second form above described, directly and advisedly imposes upon the person who receives the sum allowed the liability to keep his accounts for maintenance, to prove how much has been expended for that purpose, and his expenditure can be sanctioned so far only as he can show that the money has been actually applied.[1]

Generally no obligation to account.

Aliter, in case of order fixing maximum.

The Court has, however, undoubted jurisdiction, even where the order is in the form of an allowance of so much money for maintenance *simpliciter*, to require the committee of the person to account,[2] and to make any consequent order that it thinks fit upon him, and this jurisdiction may be exercised where it appears either that the whole allowance,[3] or any sum of money directed to be applied for a particular purpose,[4] has not been expended by the committee in the manner in which it was his duty to have laid it out, unless the application for an account is made after a lapse of time, or under circumstances that would involve a prolonged and complicated examination of accounts which it would be unfair to expect the committee to have kept.[5] The cases of *re Rosoman*[2] and *re Wood*,[2] cited by Lord Cairns, L.J., in *re French*,[1] may be taken as types of the class of circumstances under which an account will be ordered. In the former it was stated that the lunatic having an allowance of £640 a year was deprived of the common necessaries of life. There was thus a *constat* of the clearest and best kind that the allowance for maintenance had been misapplied, and that an account would show the extent to which the misapplication had taken place. In the latter the next of kin presented a petition stating that particular sums had been paid to an asylum keeper for the maintenance of the

Court may require account in case of former.

[1] Per Lord Cairns, L.J., in *re French*, 1868, 3 Ch., at p. 318.

[2] *Ib.*; *re Rosoman*, 1822, cit. *ib.*, at p. 319; *re Wood*, 1839, *ib.*, at p. 320; and cp. *ex parte Procter*, 1818, 1 Swanst. 531, where, on a petition to remove the committee of the person in consequence of bankruptcy, Lord Eldon, L.C., directed an inquiry whether the comfort of the lunatic was sufficiently provided for, regard being had to the sum allowed, though the petition did not ask for it. *Grosvenor* v. *Drax*, 1833, 2 Knapp 82, is not really a negative instance. There the application against the committee was made after the death of the lunatic, and it was sufficient for the determining of the case to say that the lunacy was at an end. In *re Ponsonby*, 1842, 3 Dr. & War. 27, Lord St. Leonards treats *Grosvenor* v. *Drax* as a deliberate decision that an account could not under such circumstances be ordered. But in *re French*, *ubi sup.*, at p. 319, Cairns, L.J., doubted whether this view was not too wide; and the order in *Grosvenor* v. *Drax*, *ubi sup.*, at p. 102, was made without prejudice to any other proceedings the respondents might be advised to institute.

[3] *Ex parte Procter*, *ubi sup.*

[4] *Re Jodrell*, 1829, Shelf. Lun. 210.

[5] Cp. Lord Cairns, L.J., in *re French*, *ubi sup.*, at p. 318.

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lunatic from 1822 to 1838, that the lunatic was in an asylum, that the only expenditure was through the medium of the asylum, and that those payments were less than the allowance. Lord Cottenham, L.C., directed an inquiry. Here, again, there being no question as to the amount or medium of the expenditure, it was easy to ascertain whether the sum allotted for maintenance had or had not been expended. On the other hand, in *re French*,[1] where a committee had received one allowance for the maintenance of a lunatic, and another for the maintenance of her infant children, and it appeared from the Visitors' report that the lunatic had been properly maintained, and there was no evidence that the committee's account of his expenditure was incorrect, Lord Cairns, L.J., refused to order an account, although the surplus of the allowance for the maintenance of the lunatic had admittedly been spent by the committee on the maintenance of her infant children.

Proper expenditure for maintenance a debt against lunatic's estate.

Expenditure properly made by a committee for the maintenance of the lunatic is a debt against the lunatic's estate,[2] and it is conceived that where an order directs payment of an allowance to be made out of a particular fund or estate, a charge is created on that fund or estate for the benefit of the committee and the relief of the other estate.[3]

The report of a Master on the claim of the committee of the lunatic's person in a matter to which the heir-at-law of the lunatic is not a party will not, as against the heir, take such claim out of the operation of the Statute of Limitations.[4]

Masters' certificate.

Preparation and form of.

Certificate of the Masters.—After the completion of the inquiries above described (pp. 337-376), the Master prepares his certificate. The certificate is prepared in the Masters' Office, without attendance of solicitors or parties as far as possible (r. 63, Rules in Lunacy 1892, *post*). It embodies the results of the prescribed inquiries, and, when necessary, states concisely the grounds of any recommendation and the circumstances relating thereto (r. 62, *ib. post*). When prepared and settled, it is sealed with the Masters' seal; and signature of the certificate by the Master which was required by r. 64 of the Rules in Lunacy 1892, *post*, is no longer necessary (r. 7, Rules in Lunacy 1893, *post*).

Objection to, how taken.

Objections may be taken to the certificate by summons before the Judge.

The Judge in Lunacy.—See notes to subs. (1), *ante*.

Orders.

Orders.—As to such orders, see *ante* p. 340. An order may be made although proceedings are pending for a traverse or new trial, and any person acting on such an order is indemnified as fully as if no right to a traverse or new trial existed (subs. (3), *post*). As to orders for commitment of estate without commitment of person, see subs. (3), *post*.

The custody.—As to committees of the person, see *ante* p. 341.

[1] *Ubi sup.* p. 376, note 1.

[2] Cp. *re Rhodes*, 1890, 44 Ch.D. 94.

[3] Cp. *Wentworth* v. *Tubb*, 1841, 1 Y. & C. N.R. 171. It is submitted that *Jones* v. *Bruce*, 1840, 11 Sim. 221, could not now be supported.

[4] *Wilkinson* v. *Wilkinson*, 1851, 22 L.J., N.S., Ch. 155.

Lunatics so found by inquisition.—See *ante* p. 259, as to inquisitions.

Management of their estates.—As to committees of the estate, see *ante* p. 347.

As to management, see *post* p. 392.

The Master's certificate . . . security.—As to appointment and duties of Masters, see sec. 111, *post*.

As to completion of security, see *ante* p. 352.

As to Master's certificate, see *sup.* p. 376.

(3) Where upon the inquisition it is specially found or certified that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the Judge in Lunacy may make such orders as he thinks fit for the commitment of the estate of the lunatic and its management, including all proper provisions for the maintenance of the lunatic, but it shall not be necessary, unless in the discretion of the Judge it appears proper to do so, to make any order as to the custody or commitment of the person of the lunatic. (Act of 1889, s. 48.)

Origin of subsection.

This subsection re-enacts the latter part of sec. 48 of the Lunacy Act 1889, which was passed in consequence of a suggestion by the Dillwyn Committee 1878, "that if it were possible to transfer to the Court of Chancery the administration of the property of a person who, though from his mental condition unfit to manage it was not dangerous to himself or others, a strong temptation to the relatives of such person to deprive him of his liberty would be removed."

See notes to preceding subsections.

Specially found . . . others.—See sec. 98, subs. (2), *ante*, and notes thereon.

All proper provisions . . . lunatic.—As to maintenance of lunatics, see *ante* p. 369.

(4) Any order under this section may be made notwithstanding proceedings are pending for a traverse or new trial, and any person acting upon an order so made shall be indemnified as effectually as if there had been no right of traverse or new trial.

This subsection consolidates and re-enacts sec. 151 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), and the third clause of sec. 7 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86).

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Any order.—See subss. (2) and (3), *sup.*

Traverse.—As to traverses, see sec. 101, *ante.*

New trial.—As to new trials, see secs. 103, 104, *ante.*

Any person acting.—Apart from this provision, any person acting on such an order could rely on sec. 330, *post.*

Costs.

109. The costs of all proceedings for the purpose of ascertaining whether a person is lunatic, and of all proceedings in the matter of a lunatic, shall be in the discretion of the Judge in Lunacy, who may order all or any of such costs to be paid by the lunatic or alleged lunatic, or to be charged upon and paid out of his estate, or such part thereof as the Judge thinks fit, or by any other party to the proceedings; and in the case of the death of the lunatic or alleged lunatic, an order for payment of costs out of his estate may be made within six years next after the right to recover the costs has accrued, and every such order shall have the effect of an order of the High Court.

This section consolidates and re-enacts secs. 74 and 145 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), and sec. 11 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86), as to the discretion of the Judge.

Costs of proceedings.

The costs of all proceedings . . . lunatic.—As to such proceedings, see *ante* p. 259, and sec. 116, *post.*

Practice down to 1825.

Down to the year 1825 the jurisdiction in lunacy was derived almost entirely from the statute *de Praerogativâ Regis* (17 Edw. II. cc. 9 & 10), and its exercise, therefore, in so far as administration of the lunatic's property was concerned, depended on that property coming into and remaining under the control of the Crown. The consequences of this state of the law as regards costs were peculiar and inconvenient. The control which the Crown acquired over the lands and goods of a lunatic by an inquisition was arrested if the right to traverse was exercised; and it was held by Lord Loughborough in *ex parte Ferne*[1] that the costs of a commission, however meritorious the case, could not be given to the party suing it out if the lunatic traversed the inquisition with success, even although the return to the traverse found that the lunatic, while of sound mind at the time of the verdict, was not so at the time of the inquisition. In *Sherwood* v. *Sanderson*,[2] Lord Eldon, L.C., held that the same rule applied where leave only to traverse had, at the time of the application for costs, been obtained, though he was able in this case to give costs, not in

Exercise of jurisdiction depended on property coming into control of Crown. Consequences

Costs of inquisition withheld if successful traverse.

Or leave given to traverse.

[1] 1801, 5 Ves., at p. 833.

[2] 1815, 19 Ves., at pp. 286, 287.

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virtue of the jurisdiction in lunacy, but because the property of the lunatic consisted in part of a fund in Court over which he had jurisdiction. The issue of a supersedeas [1] or the death of the lunatic [2] had the same effect as a traverse. The hardship of this condition of things was obvious. One aspect of its injustice was well described by Lord Eldon in *Sherwood* v. *Sanderson*:[3] "A vast expense may have been incurred by those who sued out and prosecuted the commission, which, if it has not exhausted their means, may have affected them with a prudent disinclination to go further; yet it is clear that a person found by the inquisition of unsound mind has an absolute right to require the farther proceeding. Many of his alienees also have that right. No grant, therefore, of the custody of the person or estate can be made, and the person issuing the commission, if there is no fund in his hands, cannot make an order as to the costs." In addition to this, there was the danger that a successful traverse, or supersedeas, or the death of the lunatic might make such costs finally irrecoverable.

Or death of lunatic or supersedeas.

Hardship of rule.

A partial remedy was provided in 1825 by the statute 6 Geo. IV. c. 53, sec. 4, which enabled the Lord Chancellor to make an order as to the costs of a commission notwithstanding the pending of a traverse. But that section did not alter the old law as to the effect of a successful traverse,[4] or a supersedeas,[5] or the death of the lunatic,[6] nor was any change in regard to these matters effected by secs. 74 and 145 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70). The former of these sections related to proposals received by or inquiries before the Masters, the latter to petitions, applications, orders, directions, conveyances, and transfers to be made in pursuance of the Act. It was also, down to 1862, doubtful whether the Court had power to make persons who had improperly presented a petition for an inquiry pay the costs incurred by the alleged lunatic in resisting it.[7] The law was put practically on its present basis by sec. 11 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86).

Partial remedy in 1825.

Order as to costs pending traverse.

Lunacy Regulation Act 1853.

Lunacy Regulation Act 1862.

Under sec. 109 of the Act of 1890 the Court may order the costs of an inquisition to be paid by the petitioner, or by the alleged lunatic, or may divide the costs in any proportion between them, or leave each party to pay his own costs. In the exercise of the discretion conferred upon it by this section, the Court is entitled, and bound, to look at the circumstances of each case, and no general rules or canons fettering its discretion have been or will be laid down. But the following considerations will be kept in view:[8]—

Modern rule.

1. *The reason for believing in the insanity of the alleged lunatic.*— 1. Reason for believing in insanity.

[1] *Ex parte Glover*, 1816, 1 Mer. 269.

[2] Cp. *re Pinks*, 1842, 12 L.J., N.S., Ch. 57.

[3] 1815, 19 Ves., at pp. 286, 287.

[4] *Ex parte Loveday*, 1851, 1852, 1 De G. M. & G. 275; *re Cumming*, 1852, *ib.*, at pp. 561 and 562.

[5] *Anon.*, 1859, 4 De G. & J. 103; and cp. *Re Way*, 1861, 3 De G. F. & J. 175.

[6] *Re Pinks, ubi sup.*; and *re Hart*, 1852, 21 L.J., N.S., Ch. 810.

[7] *Re Windham*, 1862, 4 De G. F. & J., per Turner, L.J., at pp. 64, 65.

[8] Cp. the judgments of Lindley, L.J., in *re Cathcart*, 1892, 1 Ch., at pp. 558, 561, and Lord Halsbury, L.C., 1893, 1 Ch., at p. 471.

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Before proceedings by inquisition are had recourse to, the person proposing to institute them should have reasonable ground for believing that the object of the contemplated commission is insane.[1] "A person may be unfit to manage himself or his affairs from various causes other than unsoundness of mind, *e.g.* various forms of illness, bodily injuries, old age, etc. But however unfit, unless insanity can be discovered, proceedings by inquisition ought not to be had recourse to."[2] It is submitted, however, that where any form of illness, or bodily injury, or old age, produces real mental infirmity, the infirmity so arising would be held to be insanity within the meaning of this rule.[3]

2. Reasons for believing in incapability to manage affairs.

2. *The reasons for believing the object of the proposed commission to be not only insane but also incapable of managing himself or his affairs.*—This is a distinct head of inquiry, and unless there is considerable evidence of inability, the inquiry ought not to be set on foot. "Inability to manage either himself or his affairs" is inability to manage both. Sections 94 and 98 of the Act remove any ambiguity in the use of the word "and" instead of "or" in sec. 90, in the phrase "managing himself and his affairs."[4]

3. Reasons for instituting proceedings: (*a*) care needed, (*b*) whether existing care sufficient; (*c*) whether patient will submit to care without proceedings.

3. *The reasons for instituting any proceedings assuming the object of the commission to be insane and incapable of managing himself or his affairs.*—The questions to be considered here are such as these:—(*a*) what care and management the alleged lunatic needs; (*b*) whether the care and management he is receiving supplies that need; (*c*) whether he can or cannot without proceedings be brought to submit himself to medical or other treatment or care.[4]

4. Petitioner's relationship, objects, and conduct.

4. *The relationship of the petitioner to the alleged lunatic, and the petitioner's objects and conduct.*—A stranger presenting a petition for purposes of his own would obviously be regarded very differently from a relative acting *bonâ fide* and in the interests of the alleged lunatic, and between these extremes there is room for great differences of degree.[4] The whole conduct of the petitioner in regard to the alleged lunatic and the inquiry is also proper subject-matter for consideration. Thus in *re Cathcart*,[5] the question whether the petitioner was justified in confining his wife under an urgency order was discussed.

5. Amount and propriety of costs incurred.

5. *The amount and propriety of the costs incurred.*—Either party may by his conduct render an inquiry much more expensive than it would otherwise have been. Lord Justice Lindley in his analysis of the considerations which should guide the Court in the exercise of its discretion, under sec. 109, added to the foregoing, "the respective means of the parties."[6] But Lord Halsbury, in delivering the judg-

[1] One of the points made against the petitioner in the *Cathcart case* in his application for costs, was that much of the evidence adduced at the inquiry in support of his petition was not within his knowledge at the time when he presented it. This consideration falls, however, under the fourth head of inquiry.

[2] Per Lindley, L.J., *ubi sup.*, at p. 559.

[3] Cp. sec. 116, subs. (1) (*d*), *post*, and *Reg.* v. *Shaw*, 1868, L.R., 1 C.C.R. 145.

[4] Per Lindley, L.J., *re Cathcart*, 1892, 1 Ch., at p. 559.

[5] 1892, 1 Ch., at pp. 563, 567, 569; 1893, 1 Ch., at pp. 474, 500.

[6] *Ubi sup.*, at p. 561.

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ment of the Court of Appeal in the same case,[1] said that he could not concur in considering this as a topic that ought to enter into the question. It is difficult to see why the Court, which may decline to order the payment of a lunatic's debts if the result would be to deprive him of a sufficient allowance for maintenance (*v. ante* p. 366), should exclude the question of the comparative means of a lunatic, or alleged lunatic, and of the person who has taken proceedings against him from its consideration in determining whether or not to order him to pay costs which might involve him in pecuniary ruin.

Modes in which discretion may be exercised.

Keeping these rules in view, we may now examine the different modes in which the Court may exercise its discretion under this section.

(1) Petitioner's costs. (*a*) Allowed out of estate.

(1) *Petitioner's costs.* (*a*) *The petitioner may be allowed all his proper costs, charges, and expenses in connection with the commission, and also of the application for costs out of the estate.*—This is the course generally taken where the object of the commission is found lunatic, and the inquiry was instituted *bonâ fide* and for his benefit.[2] In some cases[3] such costs have been treated as necessaries supplied to the lunatic. The same course may be adopted even where the inquiry results in a verdict that the lunatic is of sound mind, and the petition was presented *bonâ fide*, and the petitioner had reason for believing that the alleged lunatic was of unsound mind at the time of presenting it. In the older cases it was said that there must be *fair* reason for such belief.[4] In Lord Justice Lindley's summary of the principles applicable to cases of this kind[5] it is said that the evidence of incapacity must be *considerable*. It does not appear, however, that there is any substantial difference between the two standards.

Where lunatic so found.

Where lunatic not so found.

Report by Lunacy Commissioners ground for proceedings.

The fact that the Commissioners in Lunacy had reported that the property of a supposed lunatic was not duly protected would be a sufficient ground for the institution of proceedings to secure the petitioner's costs out of the estate, even if the respondent was not found lunatic.[6] On the other hand, evidence that the object of an unsuccessful commission was eccentric, and believed in spiritualism, and had peculiar notions about morality and women, was held insufficient to justify the Court in granting the petitioners their costs out of the estate, where they had no good reason to suppose that he was incapable of managing himself or his affairs.[7] Indeed, insanity itself, if falling short of such inability, will not constitute a good reason for an inquisition being had recourse to, or for a subsequent application for the petitioner's costs if it prove unsuccessful (*v. ante* p. 259).

Evidence of eccentricity,

or insanity short of incapacity insufficient.

[1] 1893, 1 Ch., at p. 472.

[2] *Ex parte Price*, 1751, 2 Ves. sen., at p. 407; *re Hart*, 1852, 21 L.J., N.S., Ch. 810.

[3] *Williams* v. *Wentworth*, 1842, 5 Beav. 325; *Wentworth* v. *Tubb*, 1841, 1 Y. & C. 171; *Barnesley* v. *Powell*, 1750, Ambl. 102; *Chester* v. *Rolfe*, 1853, 4 De G. M. & G. 798; *Stedman* v. *Hart*, 1854, Kay 607; *re Meares*, 1879, 10 Ch.D. 552.

[4] Cp. *re* F., 1862, 2 De G. J. & S. 89; *re* —— 1889, 5 Times L.R. 227.

[5] See note 4, p. 380.

[6] *Re C.*, 1874, L.R., 10 Ch. 75.

[7] *Re Anon.*, 1889, 5 Times L.R. 227.

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(*b*) Each party left to pay his own costs *re Windham.*

(*b*) *Each party may be left to pay his own costs, etc.*—This course was taken in *re Windham*,[1] although the Court held the case to be a proper one for inquiry. But the decision appears to have been influenced by doubt in the mind of the Judges whether they had power to give the petitioners their costs, and it is conceived that in a similar case now such costs would in whole or in part be given. Each party may, however, be left to pay his own costs even where reasonable ground for an inquiry existed, if the petitioner instituted proceedings not of his own accord but at the instance of a solicitor.[2]

(*c*) Petitioner ordered to pay costs.

(*c*) *The petitioner may be not only left to pay his own costs but ordered to pay those of the alleged lunatic.*—This alternative may be adopted where the petitioner is guilty of misconduct in regard to either the alleged lunatic or the inquiry,[3] or where the petition is unnecessary and vexatious,[4] or where the proceedings are taken for the petitioner's benefit, as, *e.g.*, to enable him to complete a transaction arrested by the alleged lunacy.[5]

(*d*) Petitioner allowed proportion of costs out of estate. Where he has assumed hostile attitude towards lunatic. Or no attempt to keep down expense. *re Cathcart.*

(*d*) *The petitioner may be allowed such a proportion of his costs as the Court thinks fit out of the alleged lunatic's estate.*—This alternative may be taken where either the petitioner—while justified in instituting proceedings—has placed himself in a hostile attitude towards the alleged lunatic, or there has been no attempt on his part to keep down expense. In such cases the Court may not only limit the amount of the costs he is to recover, but direct them to be taxed as between party and party, and not as between solicitor and client, or upon the principle adopted in the Chancery Division when costs come out of the estate.[6] In *re Cathcart*,[6] for instance, a petition was presented by a husband for an inquiry into the mental condition of his wife, and after a hearing of seventeen days it was found by a majority of the jury that the lady was at the time of the inquisition of sound mind. The expenses of the inquiry were very heavy, and the petitioner's costs were more than he was in a position to pay, while the wife was entitled to large property, part of which was not comprised in the marriage settlement.[7] The evidence showed that the wife had at one time suffered from insane delusions, which in the opinion of the Court amply justified an inquiry into her state of mind. It transpired, for instance—although the fact was not known to her husband till after he had presented his petition—that she had accused the then Home

[1] 1862, 31 L.J., N.S., Ch. 720.

[2] *Re E. S.*, 1876, 4 Ch.D. 301. Here the medical Visitor, by the Court's direction, saw the patient, and reported that the case was one for inquiry. Contrast this case with *re C.*, 1874, L.R. 10 Ch. 75, noted above, p. 381, note 5. The fact that in *re E. S.* the petitioner had presented his petition at the instigation of a solicitor was the reason for the order made, and the case in no way conflicts with the rule that even where the lunatic is not so found the petitioner will generally be allowed his costs out of the estate if he had reasonable grounds for instituting proceedings.

[3] *Re Anon.*, 1740, 2 Atk. 52.

[4] *Re Clare*, 1846, 3 J. & Lat. 571.

[5] *Ex parte Tutin*, 1814, 3 V. & B. 149.

[6] *Re Cathcart*, 1892, 1 Ch. 549, and see p. 564 ; affirmed 1893, 1 Ch. 466.

[7] The Court of Appeal held that this was a consideration of which account ought not to be taken in exercising the jurisdiction of the Court under sec. 109, see 1893, 1 Ch., at p. 472, and note *sup.* p. 380.

Secretary, who had been her counsel, while at the bar, in certain proceedings, and her mother of employing persons to poison her. On the other hand her husband had been guilty of unreasonable and harsh conduct towards her, and no attempt had, in the opinion of the Court, been made on his part to keep the expenses of the inquiry within bounds. Under the circumstances of the case the Court left the wife to pay her own costs, and gave the petitioner two-thirds of his costs of all the proceedings, including the application for costs, to be taxed as between party and party out of the property belonging to the wife, and not comprised in the marriage settlement.

(2) Alleged lunatic's costs.

(2) *Alleged lunatic's costs.*—The costs incurred by the alleged lunatic in opposing a commission of inquiry will generally be allowed out of the estate.[1] As the alleged lunatic has a right to employ a solicitor to defend him at an inquiry, the costs properly so incurred are a debt due from the lunatic to the solicitor,[2] and will be allowed as between solicitor and client, on the scale allowed for work and labour of a similar character in the Chancery Division (r. 112, Rules in Lunacy 1892, *post*), unless the Court sees that there was something unfair or frivolous or needlessly litigious in the proceedings.[3] No allowance will be made for refreshments during inquisitions (r. 113, Rules in Lunacy 1892, *post*). As to the liability of the alleged lunatic to pay the costs of the petition, see *ante* p. 381.

(3) Costs of third parties. Sometimes allowed out of estate. Sometimes paid by such parties. Vexatious opposition by third parties. Rules applicable, *mutatis mutandis*, to traverse and supersedeas. Proceedings in matter of lunatic.

(3) *Costs of third parties.*—Third parties attending an inquiry by leave of the Court, which must have been first obtained, have sometimes been allowed their costs out of the estate.[4] Such leave may, however, be granted conditionally on the party undertaking to bear his own costs. See *ante* p. 285.

If third parties vexatiously oppose the grant of a commission which is absolutely necessary for the protection of the lunatic, the Court may compel them to pay the costs incurred by such opposition.[5]

A solicitor who reasonably and in good faith, believing a client to be of sound mind, institutes proceedings on her behalf, and obtains an order for her on an *ex parte* application, without disclosing the fact that a petition in lunacy is pending against her, is not guilty of such professional misconduct as to make him liable for the costs on its being discharged.[5]

The rules above stated as to the considerations governing the exercise by the Court of its discretion under this section (*ante* p. 379), and the various modes in which such discretion may be exercised (*ante* p. 381), apply *mutatis mutandis* to traverse and supersedeas.

[1] *Re Knight*, 1832, Shelf. Lun. 133, 134; *re Taylor*, 1841, *re Norris*, 1837, *ib.*

[2] *Williams* v. *Wentworth*, 1842, 5 Beav. 325. The law is the same as regards traverse (*Wentworth* v. *Tubb*, 1843, 7 Jur. 738). The Court has jurisdiction to sanction the payment of a sum of money to the alleged lunatic's solicitor for the purpose of preparing his defence to an inquiry (*re Bullock*, 1886, 35 W.R. 109).

[3] *Wentworth* v. *Tubb*, *ubi sup.*; *Field* v. *Turner*, 1855, 3 W.R. 469.

[4] *Re Portsmouth*, 1823, Shelf. Lun. 134.

[5] *Re Smith*, 1826, 1 Russ. 348; *re George Armstrong and Sons*, 1896, 1 Ch. 536, distinguishing *Hartley* v. *Gilbert*, 1843, 13 Sim. 596, and *Beall* v. *Smith*, 1873, L.R. 9 Ch. 85.

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And of all proceedings in the matter of a lunatic, e.g. attendances on the Master on appointment of committees (*ante* p. 284), the bringing in of proposals (*ante* p. 340), etc. Charges and expenses of this description are not, however, allowed, except to committees of the estate or person, unless under special circumstances the Judge or Master directs them to be so allowed (r. 114).

Costs in lunacy, how taxed.

Costs in lunacy are taxed by and under the direction of the Master (r. 114, *post*), and subject to the Rules in Lunacy the Rules of the Supreme Court for the time being in force as to costs apply (r. 110, *post*). As to procedure on taxation of costs, see r. 115, Rules in Lunacy 1892, *post*.

Payment of costs may be enforced by subpœna (2 Dan. Ch. Pr. 1262), or by writ of *fieri facias* or *elegit* (*ib.*), or by committal under the Debtors Act 1869.[1]

Discretion.

The discretion.—See nature of this discretion and the modes of its exercise discussed, *ante* pp. 379 and 381.

The Judge in Lunacy.—See sec. 108, subs. (1), *ante*.

Appeal against order to Court of Appeal.

Order.—See form of such orders in Appendix, *post*. An appeal lies to the Court of Appeal, without leave, against any such order.[2] This matter is discussed *inf.* in the note to "Every such order shall have the effect, etc."

All or any of such costs . . . proceedings.—As to the discretion of the Judge in Lunacy under this section, and the modes of its exercise, see *ante* pp. 379 and 381.

In case of the death . . . accrued.—This provision is taken in substance from sec. 29 of the Solicitors Act 1860 (23 & 24 Vict. c. 127). As to the former law, see note to this section, *ante* p. 378. When the lunatic dies before his property has been brought under the control of the Court, the proper course is to apply by summons for a declaration that the petition was presented and the costs incurred for the benefit of the lunatic, and that they are to be taxed. They will then be allowed in the accounts. It seems, however, that the Court will not declare a petition to have been for the benefit of a lunatic in the absence of a legal personal representative.[3] It seems too that the order for payment as well as for taxation of costs must be made within six years after the right to recover has accrued.[4] There has been some difference of opinion as to when this right accrues. In *re Cumming*,[4] Knight-Bruce, L.J., held that it must accrue at a time not later than the lunatic's death, and this view derives some support from the judgment in *Wilkinson* v. *Wilkinson*.[5] On the other hand, in the former case, Turner, L.J., said that the right might possibly accrue when the Court declared the costs and expenses to have been properly incurred. The point must be regarded as an open one.

Procedure where lunatic dies before property subjected to jurisdiction in lunacy.

Order for payment of costs when must be made.

Accrual of right to recover.

Payment of costs out of estate.

Charged upon and paid out of his estate.—See notes to sec. 117,

[1] *Hewitson* v. *Sherwin*, 1870, L.R. 10 Eq. 53.

[2] *Re Cathcart*, 1893, 1 Ch. 466.

[3] *Re Popham*, 1881, 29 W.R. 403; and cp. Elmer, p. 154. Form of such orders is given in the Appendix, *post*.

[4] *Re Cumming*, 1860, 2 De G. F. & J. 376.

[5] 1851, 22 L.J., N.S., Ch. 155.

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When paid out of capital.

Application for taxation of, how made.

Previous right of action not taken away.

subs. (1), *post*. An order may be made for payment of costs out of capital where the allowance for maintenance has been settled.[1] Where costs have been ordered to be paid out of the estate, the application for taxation and payment should be made in the lunacy, and the Judge in Lunacy may restrain proceedings in other Courts,[2] and other Courts will take judicial notice of this fact.[3] But this section is permissive and not imperative, and while it gives an independent and cumulative remedy it does not take away any right of action previously existing.[4] Accordingly, a medical man employed by the solicitor to an alleged lunatic to examine him and give evidence of his sanity at an inquiry has been held entitled—assuming him to have a right of action—to sue at law for his charges in respect of the services so rendered, independently of the jurisdiction in lunacy.[4]

As to cases where there may be no independent right of action owing to the plaintiff being subject to the jurisdiction in lunacy, see *ante* p. 366.

"Effect of an order."

Every such order . . . High Court.—As to High Court, see notes to sec. 94, subs. (1), *ante*. The words "the effect of an order" mean its operative power as an order. The section does not make the order an order of the High Court. It does not enact that it shall be deemed an order of the High Court, or any equivalent phrase which would invest the order when made with all the incidents and qualities of an order of the High Court.

Orders under this section not governed by Judicature Act 1873.

Orders made under this section are therefore not governed by sec. 49 of the Judicature Act 1873, which provides that no order of the High Court as to costs only, where such costs are in the discretion of the Court, shall be subject to an appeal, except by leave of the Court making such order.[5] Moreover, appeals from orders made under this section lie to the Court of Appeal, in virtue of sec. 18, subs. (5) of the Judicature Act 1873, which provides that all jurisdiction vested in or capable of being exercised by Her Majesty in Council or the Judicial Committee of Her Majesty's Privy Council from any order in lunacy made by the Lord Chancellor or any other person having jurisdiction in lunacy "should pass to the Court of Appeal." There was such an appeal from an order of the Lord Chancellor exercising jurisdiction in lunacy. On the 14th of February 1726 it was determined by the House of Lords, after debate, and partly in view of the statute 17 Edw. II. cc. 9 and 10, *de Praerogativâ Regis*, that no appeal from such an order lay to the House of Lords, because the appeal must be made to the Crown itself in Council.[6] In consequence of this resolution the appeal then in question was brought before the King in Council, the jurisdiction was debated and affirmed on the 15th May 1728, and the matter

Appeals against, to Court of Appeal.

[1] *Re Knight*, 1832, Shelf. Lun. 133 note (*e*); *Stedman* v. *Hart*, 1854, Kay 607.

[2] *Jones* v. *Bywater*, 1832, 2 Tyr. 402; *re Weaver*, 1837, 2 My. & Cr. 441.

[3] *Stedman* v. *Hart*, *ubi sup.*

[4] *Brockwell* v. *Bullock*, 1889, 22 Q.B.D. 567; and cp. as to the right to recover under such circumstances, *re Rhodes*, 1890, 44 Ch.D. 94.

[5] *Re Cathcart*, 1893, 1 Ch., at p. 470.

[6] Cp. *Sheldon* v. *Fortescue-Aland*, 1731, 3 P.W. 107 note (*a*).

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of the appeal determined.[1] This jurisdiction was afterwards repeatedly recognised.[2]

Powers to extend to British possessions.

110. The powers and authorities given by this Act to the Judge in Lunacy shall extend to property within any British possession.

This section re-enacts sec. 147 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), and sec. 56 of the Trustee Act 1850 (13 & 14 Vict. c. 60), in so far as it affects the jurisdiction as to lunatics under that Act.

The powers and authorities . . . Judge in Lunacy.—See sec. 108, subs. (1), *ante*, and secs. 116-130, *post*.

Property.—See definition of, sec. 341, *post*.

"British possession."

British possession.—"British possession" means any part of Her Majesty's dominions, exclusive of the United Kingdom, and where parts of such dominions are under both a central and a local legislature all parts under the central legislature are for the purposes of this definition to be deemed one British possession (Interpretation Act 1889, 52 & 53 Vict. c. 63, sec. 18, subs. (3)).

The Masters.

Masters in Lunacy.

111. (1) There shall continue to be Masters in Lunacy as heretofore, and they shall, subject to the provisions of this Act and the Rules in Lunacy, execute and perform the same powers and duties as heretofore, and shall perform such other duties for the benefit of lunatics and their estates as the Lord Chancellor may direct.

This subsection is based on secs. 6-8 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Prior to 1842, Commissioners.

There shall continue to be Masters in Lunacy.—Prior to 1842 the judicial duties now discharged by the Masters in Lunacy were performed by commissioners named in commissions in the nature of writs *de lunatico inquirendo*, while their administrative and ministerial duties in regard to matters connected with the persons and estates of lunatics were divided between the Masters in Chancery and the Clerk of the Custodies.[3] The Lunacy Act of 1842 (5 & 6 Vict. c. 84) provided

Masters in Chancery and Clerk of Custodies.

[1] *Re Cathcart*, 1893, 1 Ch., at pp. 469-70.

[2] *Rochefort* v. *Earl of Ely*, 1 Bro. P.C. 450, 2 Ves. jun. 72 (edition 1833), 7 Bro. P.C. 473; *re Drax*, cit. Shelf. Lun. 19.

[3] It was the duty of the Clerk of the Custodies to make out commissions and cause them to be passed under the Great Seal. Provision was made for the abolition of this office by the statutes 2 & 3 Will. IV. c. 111, and 5 & 6 Vict. c. 84, sec. 10, and 3 & 4 Will. IV. c. 84.

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"Commissioners in Lunacy."

Masters in Lunacy.

for the appointment of two "Commissioners in Lunacy," to whom the duties of the Commissioners (sec. 1), the Masters in Chancery (sec. 3), and the Clerk of the Custodies (sec. 10) in regard to lunatics were transferred, and who were also to be *ex officio* visitors of lunatics, and to perform such other duties as the Lord Chancellor directed. The office of Master in Lunacy was thus practically, though not nominally, created in 1842. The name was supplied by sec. 2 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), the statute which also constituted the Lunacy Commission, *v. ante* p. 72. The position of the Masters was confirmed by secs. 6-8 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), and under sec. 9 of that statute their powers and duties were to be performed under the General Orders in Lunacy, subject to any special orders by the Lord Chancellor or the Lords Justices in Lunacy. It is conceived that the words "there shall continue to be" would prevent any amalgamation of the Lunacy Offices involving a change in the title "Master in Lunacy" being effected under sec. 337, *post*, without legislation. And see as to Chancery Visitors, sec. 163, subs. (1), *post*.

Subject to the provisions of this Act.—See secs. 90-107, *ante*.

The Rules in Lunacy.—See *post*.

The same powers . . . heretofore.—See general note, *sup*.

Such other duties . . . direct, i.e. by Rules in Lunacy.

(2) The powers and authorities of the Masters shall be joint and several, and they shall execute commissions and conduct inquiries connected with lunatics or their estates, and perform all other duties committed to them, either separately or together, and at such places, within such times, and in such manner as the Rules in Lunacy and, subject thereto, as the Judge in Lunacy may by any special order direct.

This subsection re-enacts sec. 9 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Powers and authorities.—See notes to subs. (1).

Masters.—See notes to subs. (1).

"Joint and several."

Joint and several.—And see r. 15, Rules in Lunacy 1892, *post*, and Form of General Commission in Elmer, Appx. No. 18. But all applications relating to the same person or his property are, so far as convenient, to be dealt with by the same Master (r. 15, *ib.*).

Execute commissions . . . them.—See notes to subs. (1). As to the execution of commissions by the Masters, see *ante* pp. 281 *et seq.* As to subsequent inquiries before the Masters, see *ante* pp. 335 *et seq.*

Rules in Lunacy.—See *post*.

Judge in Lunacy.—See sec. 108, subs. (1), *ante*.

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(3) A Master must be a barrister of not less than ten years' standing, and shall be appointed by the Lord Chancellor.

This subsection is based on sec. 6 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

See notes to subss. (1) and (2).

(4) A Master shall, before being capable of acting, make before the Lord Chancellor, in the manner now used, the declaration to be made by a Master set forth in the First Schedule.

Declaration now substituted for oath.

This subsection re-enacts the last part of sec. 6 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), except that a declaration is now substituted for an oath, in accordance with the provisions of the Promissory Oaths Act 1868 (31 & 32 Vict. c. 72).

See notes to preceding subsections.

The declaration.—See form of, Schedule i., *post.*

(5) The Masters shall have such clerks and officers as the Lord Chancellor may, with the concurrence of the Treasury as to number and salaries, determine.

This subsection re-enacts the first clause of sec. 15 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

See notes to preceding subsections.

Clerks and officers.

Such clerks and officers.—There are at present in the Masters' Office one chief clerk, five first-class clerks, four second-class clerks, three third-class clerks, and one first-class and one second-class clerk in the Taxing Department.

The Treasury.—See definition of, cited in notes to sec. 39, subs. (6), *ante.*

Salaries paid out of what funds.)

(6) The salaries of the Masters, their clerks and officers, and their expenses to the amount sanctioned by the Treasury, shall be paid out of moneys provided by Parliament.

See notes to preceding subsections.

The salaries of the Masters.—Each of the Masters receives a salary of £2000 a year.

Their clerks and officers.—The chief clerk has a salary of £800 a year.

Shall be paid out of moneys.—Under the Lunacy Regulation Act

1853 (16 & 17 Vict. c. 70), sec. 25, the salaries of the Masters, etc., were paid out of the Suitors' Fee Fund, but that section was repealed by sec. 34 of the Courts of Justice (Salaries and Funds) Act 1869 (32 & 33 Vict. c. 91), on which the present section is based. Sec. 112.

See Order as to allowances to Masters (and Chancery Visitors) of 26th January 1891, in Appx. *post*.

112. A general commission of inquiry, with such variations as may be expedient, may from time to time be issued in duplicate under the Great Seal, directed to the Masters by name, jointly and severally, who shall by virtue thereof proceed, in each case of alleged lunacy concerning which the Judge in Lunacy orders them to inquire, in like manner and with all the like powers and authorities (subject to the provisions in this Act contained) as heretofore. Commission of inquiry.

This section re-enacts sec. 39 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

A general commission.—See form of in Elmer, Appx. No. 18. Prior to 1853 a special commission (see sec. 113, *inf.*) was issued in every case. The general commission applies to inquisitions as well without as with a jury. See definition of commission, sec. 341, *post*. As to execution of commissions, see *ante* p. 281. General commission.

The Masters.—See sec. 111, *sup.*

Jointly and severally.—See sec. 111, subs. (2), *sup.*, and notes thereon.

The Judge in Lunacy.—See sec. 108, subs. (1), *ante*.

In like manner . . . heretofore.—As to procedure, see *ante* p. 281.

113. The Lord Chancellor may issue a commission specially to any person or persons alone or in addition to the Masters, or one of them, if upon any occasion he thinks it proper to do so; and the provisions of this Act so far as applicable shall extend to every commission so issued specially. Special commission may issue.

This section re-enacts sec. 50 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

See notes to sec. 112.

The Lord Chancellor.—See definition of, cited *ante* p. 198.

A commission specially.—A special commission would now be issued only where both Masters were personally interested, or for Special commission.

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some similar reason (*re Braithwaite*, 1823; *Pope on Lunacy*, p. 49, note (*o*).)

The provisions of this Act . . . specially.—See secs. 90-107, *ante*, and sec. 112, *sup.*

Power to summon witnesses.

114. The Masters may administer any oath and take any affidavit and may summon any person to give evidence before them, and every person so summoned shall be bound to attend as required by the summons.

This section re-enacts part of sec. 56 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), and sec. 18 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86).

The Masters.—See sec. 111, *sup.*

Any oath . . . any affidavit.—As to the powers of the Masters in regard to evidence, see rr. 85-91, Rules in Lunacy 1892, *post.* See forms of oaths in Appx. *post.*

Every person so summoned.—As to power of Masters to attach for contempt, see *ante* p. 304.

Expiration of Orders for the Commitment of Person.

Order for custody of person of lunatic so found to determine unless continued. (Act of 1889, s.50, subs.(1).)

115. (1) The medical attendant of every lunatic so found by inquisition shall, before the expiration of one, three, and six years respectively from the commencement of this Act, and before the expiration of every subsequent period of five years after the expiration of six years from the commencement of this Act, send to the Masters a report as to the mental and bodily condition of the patient, with a certificate under his hand certifying, if it is the fact, that the patient is still of unsound mind and a proper person to be detained under care and treatment.

This subsection re-enacts sec. 50, subs. (1) of the Lunacy Act 1889.

Every lunatic so found by inquisition.—As to inquisitions, see p. 259. As to detention of lunatic so found under order of committee of person, see sec. 12, *ante.*

One, three, and six years.—The time may be extended, see subs. (3).

The commencement of this Act.—The Act commenced on 1st May 1890, see *ante* p. 85.

The Masters.—See sec. 111.

Sec. 115 (1)-(3).

A report.—See form of such report, Appx. *post.* As to protection of person reporting, see sec. 330, *post.* Wilful misstatement of material fact is a misdemeanour, sec. 317, subs. (2), *post.* As to prosecutions, see sec. 325, *post.* Inspection of such reports cannot be obtained without leave, see *ante* p. 261.

A certificate.—See form of, Schedule ii., Form 13, *post.* As to use of such forms, see sec. 339, *post.* See notes to "report," *sup.*

(Act of 1889, s. 50, subs. (2).)

(2) If, before the expiration of any of the periods hereinbefore mentioned, such report and certificate are not sent to the Masters, they shall inquire as to the omission, and unless they are satisfied that the lunatic is still of unsound mind, the order for the commitment of the person of the lunatic as to whom such report and certificate are not sent shall determine at the expiration of such period; but nothing herein contained shall affect the commitment of the estate.

This subsection re-enacts sec. 50, subs. (2) of the Lunacy Act 1889.

See notes to preceding subsection.

The order for the commitment of the person.—As to commitment of the person, see *ante* p. 341. As to other ways in which such commitment may determine, see *ante* p. 365.

The commitment of the estate.—See *ante* p. 347. As to termination of, see *ante* p. 365.

(Act of 1889, s. 50, subs. (3).)

(3) A Master may, by order under his hand, extend the time within which any report and certificate under this section is to be sent to the Masters, and if the time is so extended, the order for commitment of the person of the lunatic as to whom the time is so extended shall continue in force until the expiration of the extended time, but such extended time shall not exceed six months.

This subsection re-enacts sec. 50, subs. (3) of the Lunacy Act 1889.

See notes to preceding subsections.

By order under his hand.—As to Masters' orders, see rr. 60-68, Rules in Lunacy 1892, *post.* It is now sufficient if such orders are sealed by the Master without signature, see r. 6, Rules in Lunacy 1893, *post.*

Months.—"Month" means calendar month (Interpretation Act 1889, 52 & 53 Vict. c. 63, sec. 3).

Sec. 115 (4).

(Act of 1889, s.50, subs.(4).)

(4) Where any order for commitment of the person of a lunatic has determined under this section, the Masters shall forthwith give notice of such determination to the committee of the person of the lunatic and to the person under whose care the lunatic is.

This subsection re-enacts sec. 50, subs. (4) of the Lunacy Act 1889.

See notes to preceding subsections.

The person under whose care.—See sec. 12, *ante*.

Management and Administration.

Extent of the administrative powers of the Judge in Lunacy. Management and administration.

116. (1) The powers and provisions of this part of this Act relating to management and administration apply :—

The powers and provisions . . . administration.—The powers and provisions relating to management and administration are contained in secs. 116-149. Most of these powers and provisions existed under the former law (see secs. 108-147 of the Lunacy Regulation Act 1853, 16 & 17 Vict. c. 70). But the present subsection largely increases the classes of persons to whom these powers are applicable. See notes to clauses (*c*), (*d*), and (*f*), *post*. This is now the great practice section in the Lunacy Office. See Forms of Summons, and Order under, in Appx. *post*. Counsel frequently appear before the Master in Chambers in applications under this section, and in cases of difficulty or importance their fees are certified for.

((*a*) Lunatics so found.)

(*a*) To lunatics so found by inquisition ;

(*a*) *Lunatics so found by inquisition.*—The Lunacy Regulation Acts 1853 (16 & 17 Vict. c. 70) and 1862 (25 & 26 Vict. c. 86) applied to lunatics so found by inquisition. As to inquisitions, see pp. 259 *et seq.*

((*b*) Lunatics not so found.)

(*b*) To lunatics not so found by inquisition for the protection or administration of whose property any order has been made before the commencement of this Act ;

(*b*) *Lunatics not so found . . . Act.*—Such orders might have been made under secs. 12-14 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86), as amended by sec. 3 of the Lunacy Regulation Amendment Act 1882 (45 & 46 Vict. c. 82). The Act commenced on 1st May 1890. See definition of "property," sec. 341, *post*.

(*c*) To every person lawfully detained as a lunatic though not so found by inquisition; Sec. 116 (1).

((*c*) Persons lawfully detained.)

(*c*) *To every person . . . inquisition.*—This clause re-enacts a corresponding clause in sec. 52, subs. (1) of the Lunacy Act 1889. "Lawfully detained" means lawfully detained under the provisions of this Act, *i.e.* within the jurisdiction, and does not apply to an Englishman detained in a foreign country in accordance with the laws of that country.[1] The difficulty arising in such cases may be met by having the lunatic either so found by inquisition or brought over to England and "lawfully detained" here.[1]

Meaning of "lawfully detained."

(*d*) To every person not so detained and not found a lunatic by inquisition, with regard to whom it is proved to the satisfaction of the Judge in Lunacy that such person is through mental infirmity arising from disease or age incapable of managing his affairs;

((*d*) Person incapable from mental infirmity.)

This clause also is taken from sec. 52, subs. (1) of the Lunacy Act 1889.

Every person not so detained.—See note to clause (*c*), *sup.*

And not found . . . inquisition.—See note to clause (*a*), *sup.*

The Judge in Lunacy.—See sec. 108, subs. (1). Subject to Rules in Lunacy, the jurisdiction of the Judge in Lunacy as regards administration and management may be exercised by the Masters, and every order of a Master in that behalf shall take effect, unless annulled or varied by the Judge in Lunacy (sec. 27, subs. (1) of the Act of 1891), to whom an appeal lies under r. 11, Rules in Lunacy 1892, *post.*

Judge in Lunacy.

That such person . . . affairs.—In order that the Judge in Lunacy may have jurisdiction under this clause, it must be proved affirmatively to his satisfaction by the parties invoking the aid of the section (1) that the person over whose property its protection is sought to be cast is incapable of managing his affairs; and (2) that such incapacity arises from mental infirmity due to (*a*) disease, or (*b*) age. It is thought that (*a*) aphasia accompanied by paralysis,[2] or (*b*) softening of the brain,[3] or (*c*) confirmed inebriety or imbecility,[4] wholly incapacitating a person from business, actually amounting to a physical disease, and whether or not in the first instance it was produced by a neurotic tendency, or by mere habit or vice; or (*d*) even a physical injury such as a wound or a blow,

Conditions under which jurisdiction may be exercised—

(1) incapacity;

(2) arising from mental infirmity due to (*a*) disease, or (*b*) age.

[1] *Re Watkins*, 1896, 2 Ch. 336.

[2] Cp. *re Dewhirst's Trusts*, 1886, 33 Ch.D. 416.

[3] Ch. *re Martin's Trusts*, 1886, 1887, 34 Ch.D. 618.

[4] See Inebriates Acts in Appx. *post.* The question might arise whether a person incapable of managing his or her affairs from imperfect mental development due, *e.g.*, to being the child of first cousins, could be brought within the jurisdiction in lunacy under this clause. It is conceived that such imperfect development might be held to be "mental infirmity arising from disease."

Sec. 116 (1).

if it induced disease and consequent mental infirmity, would satisfy the words of the clause. But the incapacity of a person to manage his affairs, if arising from physical disease alone, and not producing mental infirmity, is not sufficient,[1] nor will the clause be satisfied by evidence that, owing to advanced age or liability to cerebral hæmorrhage, any attention to business on the part of a person would be likely to have a grave or fatal result.[2]

Query whether Masters can direct inquisition in case of persons coming under (*d*).

A question might arise as to whether the power conferred on the Masters by r. 1, Rules in Lunacy 1893, *post*, to direct an inquisition upon applications to them under this section, extends to clause (*d*). The words "any application" seem to show that it would. On the other hand the clause "in the interest of any lunatic, or alleged lunatic," points in the other direction. Possibly it might be held that the words "any lunatic" include any one whom the Master thinks there is reasonable ground for suspecting to be a lunatic, and in whose case an inquisition would be desirable.

Subs. (2), *post*, applies to the persons named in this class (Act of 1891, sec. 27, subs. (4)); so also do subss. (3) and (4), *post*.

((*e*) Small property cases.)

(*e*) To every person with regard to whom it is proved to the satisfaction of the Judge in Lunacy by the certificate of a Master, or by the report of the Commissioners, or by affidavit or otherwise, that such person is of unsound mind and incapable of managing his affairs, and that his property does not exceed two thousand pounds in value, or that the income thereof does not exceed one hundred pounds per annum;

Origin of subsection.

This clause re-enacts similar provisions in secs. 12-14 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86) as amended by sec. 3 of the Lunacy Regulation Amendment Act 1882 (45 & 46 Vict. c. 82). Provision for dealing summarily with small properties was first made by section 120 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70) which applied where the net estimated value of the property of the lunatic did not exceed £500. This limit was found to be too low, and accordingly secs. 12-14 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86) substituted a limit of £1000 in value, or £50 a year. The present limits were prescribed by sec. 3 of the Lunacy Regulation Amendment Act 1882.

Lunacy Regulation Act 1853.

Lunacy Regulation Act 1862.

Jurisdiction, how may be exercised.

It is proved.—The jurisdiction may be exercised (1) *on the certificate of a Master*; (2) *on the report of the Commissioners*; (3) *on proof by affidavit or otherwise.*

[1] Cp. *re Barber*, 1888, 39 Ch.D. 187. [2] Cp. *re Campbell*, 1888, W.N. 1888, 176.

Sec. 116 (1).

Judge in Lunacy.

The Judge in Lunacy.—See sec. 108, subs. (1), *ante*. The Masters possess the powers of the Judge in Lunacy as to management and administration (sec. 27, subs. (2), Act of 1891). In dealing with an application under this clause, the Master may direct an inquisition under r. 1, Rules in Lunacy 1893, *post*, since "lunatic" includes "a person of unsound mind" (see sec. 341, *post*). See note to clause (*d*), *sup.*

Certificate of Master.

The certificate of a Master.—As the Masters have now jurisdiction to deal with applications under this subsection themselves, this mode of procedure cannot generally be applicable. It might be adopted, however, by a Master who in holding an inquisition found that the property of the lunatic came within the prescribed limits. As to the preparation, etc., of Masters' certificates, see rr. 60-68, Rules in Lunacy 1892, *post*.

Report of Commissioners.

The report of the Commissioners.—As to the power of the Commissioners to institute inquiries as to property, see sec. 50, subs. (2), *ante*. As to inquisition being ordered on report of Commissioners, see sec. 100, *ante*.

Procedure. Summons.

Not petition.

Notice.

Affidavit or otherwise.—The application should be made by summons at Chambers before the Master (r. 19, Rules in Lunacy 1892, *post*). See general form of summons, Appx. *post*. As the Masters have now jurisdiction over applications under this subsection, it would be improper to proceed by way of petition (cp. r. 21, Rules in Lunacy 1892, *post*). Seven clear days' notice of the application is to be given to the alleged lunatic by service on him of a copy of the summons, with a notice endorsed thereon by the applicant or a solicitor.[1] The notice is to be in Form 8 of the Schedule to the Rules in Lunacy 1892, *post*, or to that effect,[2] and is to be served in the manner in which under the subsection notice of a petition for an inquisition is to be served. The summons is returnable not less than seven clear days from its date (r. 48, Rules in Lunacy 1892, *post*).

Affidavit of service.

An affidavit of service, stating particularly the time, place, and mode of service, and where there has not been personal service, the grounds of such service not having been made, is to be filed with the Master (r. 49, *ib. post*).

Notice of objection.

The person so served may file a notice of objection to the application (r. 50, *ib. post*). The Master may, if he think fit, dispense with notice of any application after the first (r. 51, *post*), and may visit such person, order him to be produced before him (r. 52, *ib. post*), or request the Chancery Visitors to visit him and report (r. 5, Rules in Lunacy 1893, *post*), as he directs. He may also direct that notice of the application be given to any of the next of kin of the person to whom the application relates, or to any other person; and only such persons as the Master directs to be served with notice are entitled to attend

Powers of Master.

[1] The signature of a managing clerk, if he is a solicitor, will be sufficient. Cp. *re Summerville*, 1885, 31 Ch.D. 160, turning on r. 59 of the Lun. Order, 1883, where the words were "*his* solicitor."

[2] In the case of a firm, the firm signature would, it is thought, be admissible, although the form refers to "solicitor" only. See sec. 338 as to use of forms.

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before him (r. 53, Rules in Lunacy 1892, *post*). In all cases not otherwise specially provided for, the provisions of the rules relating to lunatics so found, and the other general provisions of the rules, apply to applications under this subsection (r. 55, Rules in Lunacy 1892, *post*), in so far as unrepealed by the Schedule to the Rules in Lunacy 1893, *post*. The Master may direct a petition for an inquisition to be presented by such person as he thinks fit in any application under this clause, and if such direction is not complied with within ten days, or such further time as the Master may allow, after it is given, the Master may direct the official solicitor to present it (r. 1, Rules in Lunacy 1893, *post*). The Master has also power in any case of undue delay in any proceeding, or if he is dissatisfied with the conduct of any proceeding, or the mode in which any order or direction is being carried out, to summon before him the party appearing to be answerable, to explain the circumstance, and to make such order as he thinks right, and to direct the official solicitor to summon such person for the purposes aforesaid. And the Master may, if he think fit, appoint the official solicitor to act as solicitor in such matter in place of any solicitor previously acting (r. 2 (1), Rules in Lunacy 1893, *post*). An order under the rule just quoted is subject to an appeal to the Judge under r. 11 of the Rules in Lunacy 1892, *post* (r. 2 (2), Rules in Lunacy 1893, *post*). Any costs incurred by the official solicitor in relation to any such procedure are to be paid by such parties or out of such fund as the Master directs (r. 3, *ib.*, *post*).

Rules relating to lunatics so found apply.

Petition for inquisition may be directed.

Undue delay, how dealt with. Official solicitor.

Costs incurred by.

As to undertaking to be given by any person appointed to do any act or exercise any power in relation to management or administration, see r. 4, Rules in Lunacy 1893, *post*.

Protection of property in uncontested cases.

That such person . . . affairs.—This clause is intended only for the protection of the property in uncontested cases, and the jurisdiction will not be exercised where the alleged lunatic, having sufficient intelligence to do so, disputes the allegation of his insanity, even if, which is doubtful, it exists in such cases.[1]

Value of property.

His property.—In estimating the value of a lunatic's property, for the purposes of this section, his debts and the expenses of his past maintenance are to be deducted.[2]

Alternative given to Judge in Lunacy.

£2000 *in value . . . or . . .* £100 *per annum.*—The power is given to the Judge in Lunacy in the alternative, either if the property of the lunatic does not exceed £2000 in value, or if the income of it does not exceed £100 a year.[3]

Grant of administration not made to stranger.

A grant of administration to an estate coming in point of value within this section will not be made to a stranger in blood of the deceased for the use and benefit of a sole next of kin being a lunatic

[1] Cp. *re Lees*, 1884, 26 Ch.D. 496.

[2] *Re Faircloth*, 1879, 13 Ch.D. 307; and cp. *re Sandford*, 1849, 1 Mac. & G. 538; and *re Adams*, 1864, 9 L.T., N.S., 626, 4 De G. J. & S. 182, 12 W.R. 291, 3 N.R. 339. These different reports are compared by Baggallay, L.J., in *re Faircloth*, *ubi sup.*, at pp. 308, 309, and held to substantiate the proposition stated in the text. See also report in 10 Jur., N.S., 137.

[3] *Harvey* v. *Trenchard*, 1864, 1 Mac. & G. 240. 34 Beav. 240

not so found, until an order under this section has been obtained rendering the property available for maintenance.[1] Sec. 116 (1), (2).

As to powers of the Judge in Lunacy in regard to persons falling under this class and the other classes, see subss. (2)-(5).

(*f*) To every person with regard to whom the Judge is satisfied by affidavit or otherwise that such person is or has been a criminal lunatic and continues to be insane and in confinement. ((*f*) Crimina lunatics.)

Origin of clause.

Secs. 12 and 13 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86), which gave the Lord Chancellor power to make orders for the purpose of rendering small properties of lunatics available for their maintenance or benefit, or for carrying on their trades or businesses, were extended to criminal lunatics by sec. 10, subs. (3) of the Criminal Lunatics Act 1884.[2] The present clause supersedes the latter provision.

The Judge.—See note to clause (*d*), *ante*.

Affidavit or otherwise.—As to procedure, see notes to clause (*e*).

Criminal lunatic.—Definition of, sec. 341, *post*. As to, see *post*.

Order under this clause, when made.

Insane and in confinement.—As to discharge of criminal lunatic, see Criminal Lunatics Act 1884, sec. 5, *post*. An order will be made under this clause only where it will benefit the lunatic, or is necessary for his maintenance (see p. 366), or for the carrying on of his trade or business.

Suggestion of possible benefit insufficient.

The mere suggestion of a possible benefit is not sufficient. Thus where a person of small means was confined as a criminal lunatic in Broadmoor Asylum, and there appeared no reasonable prospect of his recovery and release, the Court refused to make an order, on the application of his mother and brother, that his property, along with some property in which they were interested together with him, should be applied in payment of moneys for which the lunatic had given security, the mother undertaking to pay his other debts.[3] If there had been a reasonable probability of his recovery and release, the case would have been open to different considerations.[4]

(2) In the case of any of the above-mentioned persons not being lunatics so found by inquisition, such of the powers of this Act as are made exerciseable by the committee of the estate under order of the Judge shall (Appointment of person to exercise powers of committee.)

[1] Cp. *re Slumbers*, 1865, 12 L.T., N.S., 582.

[2] An order under sec. 12 of the Act of 1862 was, however, made in the case of a criminal lunatic as far back as 1864, cp. *Harvey* v. *Trenchard*, 34 Beav., at p. 241.

[3] *Re Price*, 1887, 34 Ch.D. 603; and cp. *re Brice*, 1888, W.N. 40.

[4] *Re Price*, *sup.*, per Cotton, L.J., *ubi sup.*, at p. 605.

Sec. 116 (2)-(4).

be exercised by such person in such manner and with or without security as the Judge may direct, and any such order may confer upon the person therein named authority to do any specified act, or exercise any specified power, or may confer a general authority to exercise on behalf of the lunatic, until further order, all or any of such powers without further application to the Judge.

Act of 1891, s. 27, subs. (4).

27. (4) The provisions of section one hundred and sixteen, subsection two, of the principal Act shall apply to the persons named in subsection one (*d*) of the same section though not lunatics.

Such of the powers.—See sec. 120, *post.* See form of order in Appx. *post.*

The committee of the estate.—See *ante* p. 347.

The Judge.—See note to subs. (1) (*d*), *ante.*

Undertaking if no security.

With or without security.—If security is not demanded, an undertaking is generally required. As to such undertaking, see r. 4, Rules in Lunacy 1893, *post.* As to security, see *ante* p. 351.

(Powers of person so appointed.)

(3) Every person appointed to do any such act or exercise any such power shall be subject to the jurisdiction and authority of the Judge as if such person were the committee of the estate of a lunatic so found by inquisition.

See notes to subs. (2).

As if . . . inquisition.—As to position, duties, and liabilities of committee of the estate, see *ante* pp. 347 *et seq.*

(Application of powers.)

(4) The powers of this Act relating to management and administration shall be exerciseable in the discretion of the Judge for the maintenance or benefit of the lunatic or of him and his family, or where it appears to be expedient in the due course of management of the property of the lunatic.

The powers . . . administration.—See secs. 116-130.

The Judge.—See note to subs. (1) clause (*d*).

Maintenance.—As to maintenance, see pp. 366, 369.

Benefit.—See notes to clause (*f*), *ante.*

Sec. 116 (4), (5).

Lunatic.—See definition of, sec. 341, *post.* The subsection, however, applies to all the classes enumerated in subs. (1).

Due course of management.—As to management of property, see pp. 403 *et seq.*

Property.—Definition of, sec. 341, *post.*

(5) Nothing in this Act shall subject a lunatic's property to claims of his creditors further than the same is now subject thereto by due course of law.

This subsection re-enacts sec. 146 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

A lunatic's property.—This subsection applies to classes (*a*), (*b*), (*c*), (*d*), (*e*), and (*f*), *ante.* Definition of "property," sec. 341, *post.*

Claims of creditors, when disallowed.

Further than the same . . . law.—In the case of each of the classes above mentioned, viz. (*a*), (*b*), (*c*), (*d*), (*e*), and (*f*), the Judge in Lunacy will not order the payment of the claims of creditors out of funds under his control where such funds are insufficient to provide for the maintenance of the lunatic. The cases[1] establishing this proposition have already been discussed (see *ante* p. 366).

Liability of lunatic under bankruptcy law. Questions involved.

The question whether, and, if so, how far, a lunatic is liable under the bankruptcy law is one of considerable difficulty, and cannot be regarded as settled. Two subordinate questions are involved in it. 1. *Can a lunatic commit an act of bankruptcy?* 2. *Can he be adjudicated bankrupt?*

1. Can lunatic commit act of bankruptcy?

1. *Can a lunatic commit an act of bankruptcy?*—The cases throw very little light on the subject. A distinction appears to be drawn between voluntary acts of bankruptcy and acts of bankruptcy *in invitum.* The former a lunatic cannot, it is suggested, commit unless during a lucid interval.[2] The latter he possibly may.[3] The question was raised in *re Farnham* (1).[1] Mr. Farnham was found lunatic by inquisition on 5th August 1893. In November 1893 some judgments were recovered against him, and executions were issued under which the sheriff seized some of his goods and retained possession of them for twenty-one days. This retainer being under sec. 1 of the Bankruptcy Act 1890 an act of bankruptcy, and one it may be added of an *in invitum* character, a bankruptcy petition founded on that act was presented by a creditor, and a receiving order was made against

re Farnham.

[1] Cp. *Horne* v. *Pountain*, 1889, 23 Q.B.D. 264; *re Leavesley*, 1891, 2 Ch. 1; *re Plenderleith*, 1893, 3 Ch. 332; *re Farnham* (1), 1895, 2 Ch. 799.

[2] *Ex parte Priddy*, 1793, Shelf. Lun. 566. In *Crispe* v. *Peritt*, 1744, Willes 467, which is cited in Williams' Bankruptcy, p. 4, as an authority for the proposition in the text, Willes, C.J., said, at p. 473, "A lunatic cannot be a bankrupt." It would appear, however, from the context that he meant *cannot be made bankrupt.* See observations, *inf.*

[3] *Ex parte Stamp*, 1846, De Gex 346, where Knight-Bruce, C.J., said, "Can such a person (*i.e.* a fatuous or delirious person) commit an act of bankruptcy by omitting to give a bond?" Cp. *Capper* v. *Dando*, 1835, 2 A. & E., 458.

Sec. 116 (5).

the lunatic on 17th March 1894. The case came into Court on an application by the trustee in bankruptcy to obtain delivery of certain plate alleged to have been given by the lunatic to his wife, who was his committee. But it clearly raised the question not only whether a lunatic can be adjudicated bankrupt—as to which see below,—but also whether he can commit an act of bankruptcy, at least of an *in invitum* character. The Court decided the case on another ground (see note to sec. 117, *post*). Lord Justice Lindley said that the question whether a lunatic could be adjudicated a bankrupt at all was not free from difficulty, and that he did not propose to solve it then. No direct reference was made to the question whether a lunatic can commit an act of bankruptcy, although, of course, in this case, where the alleged act of bankruptcy was committed subsequent to the inquisition, a decision in favour of the validity of the adjudication would have involved an affirmative answer to that question.

Discussion of question on principle.

The question under consideration is thus open for discussion on general principles. It is submitted that the question whether any one of the classes of lunatics to whom this section applies can commit an act of bankruptcy either voluntary or *in invitum* should be treated as a question of fact to be decided by tests similar to those which determine a lunatic's capacity to contract or his liability for torts or crimes.

Question of fact.

Test to be applied.

Reasons alleged why lunatic not capable.

Incapable of fraudulent intention.

Two reasons are suggested why a lunatic should not be deemed capable of committing an act of bankruptcy. The first, which only applies, and is indeed restricted where it is assigned, to voluntary acts of bankruptcy, is that a lunatic is incapable of fraudulent intention. Many lunatics are, however, capable of such intention, and as the modern substantive law of lunacy proceeds on the principle that the civil capacity and civil and criminal responsibility of the insane are questions of fact, there would seem to be no good reason why the capacity to commit an act of bankruptcy should be excepted from this general rule.

Quasi-penal consequences of act of bankruptcy.

The second reason assigned is that an act of bankruptcy has *quasi*-penal consequences. It would seem to be a sufficient answer to say that murder and arson and theft have directly penal consequences, and that, in spite of this, insane persons can commit, and are frequently punished for the commission of, these offences. These observations apply to lunatics so found as well as those not so found, since the inquisition is not conclusive—though it is very strong presumptive—evidence of incompetence (see *ante* p. 35).

2. Can lunatic be adjudicated bankrupt?

2. *Can a lunatic be adjudicated a bankrupt?*—The Judge in Lunacy in the exercise of his jurisdiction to do what is for the benefit of a lunatic so found, may allow his committee to file a declaration of the lunatic's inability to pay his debts,[1] or consent to an adjudication.[2] In *ex parte Cahen*,[3] it was held that a liquidation petition could not be signed by a next friend on behalf of a lunatic not so found by inquisition. It is conceived, however, that under subs. (4) of this

Judge may allow committee to file declaration or consent to adjudication.

[1] *Re James*, 1884, 12 Q.B.D. 332.
[2] *Re Lee*, 1883, 23 Ch. D. 216.
[3] 1879, 10 Ch. D. 183; and cp. *ex parte May*, 1841-42, 2 Mont. Dea. & D. 381; *ex parte Roberts*, 1840, Mont. & C. 653; *re Brady*, 1887, 19 L.R. Ir. 71.

Sec. 116 (5).

section the Judge in Lunacy might now exercise, in the case of lunatics not so found, the jurisdiction which exists in the case of those so found. These cases rest, however, on the general jurisdiction of the Judge in Lunacy, and do not conclude the question whether a lunatic can be adjudicated bankrupt at the instance of his creditors if no difficulty as to a sufficient allowance for his maintenance being left arises. In *Anon.*,[1] Lord Eldon, L.C., said that lunacy is no defence to a petition in bankruptcy. In this case it would appear, though the report is exceedingly brief, that the liability to bankruptcy had been incurred before the debtor became lunatic, and the *ratio decidendi* was that as a commission in lunacy will not protect the lunatic against an action, it is equally no defence against a commission in bankruptcy, which is a species of action. In *re Farnham* (1),[2] as already mentioned, the question was left open, and in *re Farnham* (2),[3] a subsequent development of the same case, in which it was held that the Court in Lunacy had no jurisdiction to order the trustee in the bankruptcy of a lunatic to pay into Court to the credit of the lunacy moneys in his possession or control, for the purpose of enabling the committee to apply the same for the benefit of the lunatic, leave to the committee to apply to annul the adjudication was refused, on the ground that it would not be for the benefit of the lunatic. It is submitted that the question should be determined in each case, as it arises, on principles similar to those above stated. If a person is insane, but not so found, he ought to be liable to bankruptcy proceedings if he is sufficiently sane to be served with legal process; if he is not, a guardian *ad litem* could be appointed. In the case of a lunatic so found, the matter must largely depend on the general jurisdiction in lunacy. But the lunatic might, unless the Court saw reason to the contrary, defend such proceedings in the ordinary way.

Query whether at instance of creditors. *re Anon.*

re Farnham.

It only remains to note the statutory provisions relating to this subject. The Bankruptcy Act 1861, sec. 166, recognised the possibility of a lunatic being made a bankrupt by enacting special proceedings for adjudication in bankruptcy against a lunatic in prison for debt. But these were omitted from the Act of 1869, and also from that of 1883, no such provisions being necessary, as imprisonment for debt except in certain special cases was abolished.[4] The Act of 1890 speaks, however, in perfectly general terms of debtors (see sec. 1), and contains a specific provision for the relief of a lunatic debtor in regard to his public examination (sec. 2, subs. (2)), which confirms the view here expressed, that a lunatic may be adjudicated a bankrupt. The subsection in question provides that where a debtor is a lunatic, the Court may dispense with his public examination, or direct that he be examined on such terms, in such manner, and at such place as to the Court seems expedient.

Statutory provisions as to bankruptcy. Bankruptcy Act 1861. Acts of 1869 and 1883. Act of 1890.

The lunacy of a creditor is no bar to the proof of his debt in bankruptcy. In the case of a lunatic so found, such proof will be

Lunacy of creditor no bar. If so found, proof by committee.

[1] 1807, 13 Ves. 590.
[2] 1895, 2 Ch. 799.
[3] 1896, 1 Ch. 836.
[4] Cp. Robson on Bankruptcy, p. 120; and cp. *ex parte Farr*, 1864, 10 L.T., N.S., 44, decided under this Act.

Sec. 116 (5).

made by the committee of the estate.[1] The committee of the estate has no power without the sanction of the Court of Lunacy to appoint a proxy to vote on behalf of the lunatic in the lunacy, in the liquidation proceedings, or to waive any of his rights against the debtor's estate.[2]

If not so found. Application for leave to prove.

In the case of a lunatic not so found, some other person, *e.g.* a friend of the family,[3] or the lunatic's mother,[4] will be allowed to prove in his behalf. The application for leave to prove is made in the usual way; the applicant will not be required to pay the trustee's costs of appearance,[5] and the Court will admit any satisfactory evidence in proof of the debt.[6]

Where an action has been brought by the committee of a lunatic, and the lunatic is subsequently adjudicated bankrupt, the right of action vests in his trustee in bankruptcy, and if the trustee declines to prosecute the action, he cannot be added as a defendant against his will. Where he has been so added, he is entitled to have the action stayed as against him.

In *re Farnham* (1),[7] the Lords Justices did not dispute that the property and the legal right to it were vested in the trustee in bankruptcy, but they said that they had, as it were, a higher power, and could direct the application of the property. That case did not decide that the committee can bring an action to assert a right which is vested in the trustee in bankruptcy of a lunatic.[8]

General rule under section 127 of the Bankruptcy Act 1883.

THE FOLLOWING GENERAL RULE WAS, ON 11TH NOVEMBER 1895, MADE PURSUANT TO SECTION 127 OF THE BANKRUPTCY ACT 1883.

1. Where it appears to the Court that any debtor or creditor or other person who may be affected by any proceeding under the Act or rules is a lunatic, not so found by inquisition (hereinafter called the lunatic), the Court may appoint such person as it may think fit to appear for, represent, or act for, and in the name of the lunatic, either generally, or in and for the purpose of any particular application or proceeding, or the exercise of any particular rights or powers which under the Acts and rules the lunatic might have exercised if he had been of sound mind. The appointment may be made by the Court either on an application made as hereinafter mentioned, or, if the Court thinks fit so to do, without any previous application.

2. An application to the Court to make an appointment under this rule may be made by any person who has been appointed by any Court having jurisdiction so to do, to manage the affairs or property of, or to represent the lunatic, or by any relative or friend of the

[1] *Re Brady*, 1887, 19 L.R. Ir. 71.
[2] *Ex parte Wood*, 1879, 10 Ch.D. 554.
[3] *Ex parte Maltby*, 1813, 1 Rose 387.
[4] *Ex parte Oxtoby*, 1847, De G. 453.
[5] *Ex parte Heald*, 1843, 12 L.J., N.S., Bank. 37; *ex parte Bucknall*, 1843, *ib.* 42.
[6] *Ex parte Clarke*, 1826, 2 Russ. 575; and cp. *Herbert* v. *Matthews*, 1816, 19 Ves. 611.
[7] 1895, 2 Ch. 799, and *ante* p. 399.
[8] *Farnham* v. *Milward and Co.*, 1895, 2 Ch. 730.

lunatic who may appear to the Court to be a proper person to make the application, or by the official receiver. Sec. 117 (1).

3. The application may be made *ex parte* and without notice, but in any case in which the Court shall think it desirable, the Court may require such notice of the application as it shall think necessary to be given to the official receiver or trustee (if any), or to the petitioning creditor, or to the person alleged to be a lunatic, or to any other person, and for that purpose may adjourn the hearing of the application.

4. Where the application is made by some person other than the official receiver, it shall be supported by an affidavit of a duly registered medical practitioner as to the physical and mental condition of the lunatic. Where the application is made by the official receiver, it may be supported by a report of the official receiver, the contents of which shall be received as *primâ facie* evidence of the facts therein stated.

5. When a person has been appointed under this rule, any notice under the Act and rules served on, or given to, such person, shall have the same effect as if the notice had been served on or given to the lunatic.

6. This rule shall apply to every proceeding in bankruptcy pending on the date when the rule comes into operation.

7. Rule 271 of the Bankruptcy Rules 1886 is hereby annulled, and this rule (which may be cited with the Bankruptcy Rules 1886 and 1890, as rule 271A) shall come into operation on December 1, 1895, and have effect in lieu of the said rule as one of the said rules.

Power to raise money for certain purposes.

117. (1) The Judge may order that any property of the lunatic, whether present or future, be sold, charged, mortgaged, dealt with, or disposed of as the Judge thinks most expedient for the purpose of raising or securing, or repaying with or without interest, money which is to be or which has been applied to all or any of the purposes following :—

(*a*) Payment of the lunatic's debts or engagements ;

(*b*) Discharge of any incumbrance on his property ;

(*c*) Payment of any debt or expenditure incurred for the lunatic's maintenance or otherwise for his benefit ;

(*d*) Payment of or provision for the expenses of his future maintenance.

Sec. 117 (1).

Origin of subsection.

This subsection re-enacts sec. 116 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), as extended by sec. 16 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86), except that portion of the former section relating to costs which was superseded by sec. 11 of the Act of 1862, now re-enacted by sec. 109, *ante*. This subsection defines the purposes for which the property may be disposed of. Sec. 120 deals with the different modes of disposition which may be authorised.

The Judge.—See sec. 108, subs. (1), *ante*, and notes to sec. 116, subs. (1) clause (*d*), *ante*.

Order.—The order will contain directions to the committee or other person acting under sec. 116, subs. (2), *ante*, to execute any necessary deeds.[1] For form of order see Seton, 5th ed., p. 1064, No. 15. Conveyances will now be made under the Trustee Act 1893.

Property.—See definition of, sec. 341, *post*.

Lunatic.—Persons coming within clauses (*a*) to (*f*) inclusive of sec. 116, subs. (1), *ante*, are within the meaning of this term.[2]

"Sold."

Sold.—This term, probably independently of, and certainly when taken in connection with sec. 120 (*a*), *post*, is sufficiently wide to enable the Court to sanction a sale, although it is not for a price to be paid down at once, but *e.g.* in consideration of a perpetual rent-charge, if the transaction is for the lunatic's benefit.[3] The law as to the sale of a lunatic's property is discussed in the notes to sec. 120 (*a*), *post*.

"Charged."

Charged.—As to charge for permanent improvements, see sec. 118, *post*.

"Mortgaged."

Mortgaged.—As to directions in case of charge or mortgage for future expenses, see subs. (2), *post*.

"Dealt with."

Dealt with or disposed of.—See notes to sec. 120 (*b*) to (*l*) inclusive, *post*.

Power limited to specified purposes. *re Corbett.*

All or any of the purposes following.—The power is strictly limited to the purposes specified in the subsection. Thus in *re Corbett*,[4] a case decided under sec. 116 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), on which the present subsection was founded, it was held that a sale of real estate could not be ordered for the expenses of future maintenance where the income was already more than sufficient for the maintenance of the lunatic, Lord Chelmsford, L.C., saying, "I am bound by the terms of the 116th section, beyond which I am not at liberty to go." Again, in *re Vavasour*,[5] Lord Truro, L.C., held that the right to the next presentation of a rectory, of the advowson of which a lunatic was tenant in tail in possession, could not be sold under 1 Will. IV. c. 65, sec. 28, where the object of the sale was not within the purposes enumerated in the section.

re Vavasour.

[1] Per Lindley, L.J., in *re Ware*, 1892, 1 Ch., at p. 347.

[2] Cp. *re X.*, 1894, 2 Ch. 415.

[3] *Re Ware*, 1892, 2 Ch. 344.

[4] 1866, L.R. 1 Ch. 516; and in the same case it was held that the 125th section of the Act of 1853, which enabled the Court to sell for building purposes land of which the lunatic was seised in fee-simple, did not apply to estates of which he was tenant for life.

[5] 1851, 3 Mac. & G. 275; *re Burbidge*, 1850, *ib.* 1.

Sec. 117 (1).

The Court may, however, exercise its powers under this subsection in any proper case, although the purpose in question could be attained in some other way.[1]

Powers exerciseable though purpose otherwise attainable.

(*a*) *Payment of the lunatic's debts or engagements.*—This subject is discussed *ante* p. 365. In *re Fox*,[2] a case decided upon identical words in sec. 116 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), it was held that a mortgage might be ordered of a lunatic's estate under this clause to pay an ancestor's debts. The Court declined, however, to authorise the committee to enter into any covenant on behalf of the lunatic. But the decision on this point is limited to the particular circumstances of the case.[3] (See notes to sec. 124, *post*.)

(*a*) Payment of debts, etc.

(*b*) *Discharge of any incumbrance on his property.*—Under this clause the property of a lunatic may be sold, mortgaged, etc., for the commutation of tithes and the redemption of the land tax,[1] or of charges on a lunatic's real estate.[4] As to whether the discharge of an incumbrance enures for the benefit of the real or of the personal estate, see notes *inf.*

(*b*) Discharge of incumbrances.

(*c*) *Payment . . . benefit.*—This subject is discussed *ante* p. 366.

(*d*) *Payment . . . maintenance.*—This subject is discussed *ante* p. 369.

(*c*) Payments for benefit of lunatic.

(*d*) Maintenance.

It may be convenient to consider here the questions—which are of considerable difficulty—whether the discharge of incumbrances enures for the benefit of the real or of the personal estate of the lunatic, and at what time the matter is decided.

Discharge of incumbrances, whether enures for benefit of real or personal estate.

The general principle which underlies so much of the statutory law of lunacy, that the Court will do what is for the benefit of the lunatic,[5] and the subsidiary principle that the Court will, as far as possible, avoid any alteration of his estate,[6] are the governing considerations in the determination of the question as to the incidence of the costs of discharging incumbrances.

Governing considerations.

Benefit of lunatic.

Avoidance of alteration of estate.

Subject to these, and to the express power given to the Judge in Lunacy by sec. 118, subs. (1), *post*, to make moneys expended for the advantage of the property of the lunatic a charge upon any part of his property, it is conceived that the Court will look to, first, the interest, whether limited or in fee, of any person paying off the

Interest of person paying off incumbrance.

[1] Cp. *ex parte Phillips*, 1812, 19 Ves. 118, where a land tax on a lunatic's estate was redeemed by an order in lunacy, although there was some suggestion that the result could have been effected under the Land Tax Acts.

[2] 1886, 33 Ch. D. 37; *re Pugh*, 1853, 3 De G. M. & G. 416.

[3] *Re Ray*, 1896, 1 Ch. 468.

[4] *Ex parte Earl Digby*, 1820, 1 J. & W. 640, where the charge bore a higher rate of interest than could be made from the surplus rents of the lunatic's estate. The statutes 6 & 7 Will. IV. c. 71, secs. 15 and 48, and 42 Geo. III. c. 116, secs. 14 and 53, respectively give the committee of the estate extensive powers to contract for the commutation of tithe or the redemption of the land tax. But the previous sanction of the Court should be obtained, *re Wade*, 1849, 1 H. & T. 202; and cp. *re Taylor*, 1849, 1 Mac. & G. 210, where the costs occasioned by a reference to the Master as to the propriety of the sale of part of a lunatic's estate to a railway company were ordered to be paid by the company under the Lands Clauses Consolidation Act 1845, on the ground that it was necessary to have a reference to determine whether the contract was proper and beneficial.

[5] See *ante* p. 370.

[6] See *post* p. 430.

Sec. 117 (2).

incumbrances;[1] and, secondly, the nature of the estate out of which the money for the discharge of the incumbrance is derived.[2]

Nature of estate.

It was laid down by Lord Chancellor Sugden in *Lord Leitrim* v. *Enery*,[3] that in general the proper time for deciding whether the payment is to have the effect of exonerating the heir-at-law or not is when the payment is made, and this is the usual practice. But in some cases the question has been reserved.[4] If the question is neither disposed of nor reserved, the real and personal representatives take the estate on the death of the lunatic as they find it.[5]

(Charge or mortgage for future maintenance.)

(2) In case of a charge or mortgage being made under this Act for the expenses of future maintenance, the Judge may direct the same to be payable, either contingently if the interest charged is a contingent or future one, or upon the happening of the event if the interest is depending on an event which must happen, and either in a gross sum or in annual or other periodical sums, and at such times and in such manner as he thinks expedient.

This subsection re-enacts sec. 117 of the Lunacy Regulation Act 1853 (16 and 17 Vict. c. 70).

Mortgage.—Definition of, sec. 341, *post.*

The expenses of future maintenance.—See subs. (1) (*d*), *sup.*, and *ante* p. 369.

The Judge.—See sec. 108, subs. (1), *ante.*

Charge for permanent improvements.

118. (1) The Judge may order that the whole or any part of any moneys expended or to be expended under his order for the permanent improvement, security, or advantage of the property of the lunatic, or of any part thereof, shall, with interest, be a charge upon the improved property or any other property of the lunatic, but so that no right of sale or foreclosure during the lifetime of the lunatic be conferred by the charge.

[1] Cp. *Newcombe* v. *Newcombe*, 1841, 3 Ir. Eq. 414; *Lord Leitrim* v. *Enery*, 1844, 6 Ir. Eq. 357. Cp. *ex parte Grimstone*, 1771-72, Ambl. 706; *Ware* v. *Polhill*, 1805, 11 Ves., at p. 277; *ex parte Phillips*, 1812, 19 Ves. 118; *ex parte Earl Digby*, 1820, 1 Jac. & W. 640; *Weld* v. *Tew*, 1829, Beatt., at p. 275.

[2] Cp. *re Leeming*, 1861, 3 De G. F. & J. 43.

[3] *Ubi sup.* note 1, at p. 369.

[4] See forms of order in *re Leeming*, *ubi sup.*, at p. 44; and *re Melly*, 1883, 31 W.R. 898.

[5] Cp. *re Ryder*, 1883, 20 Ch.D. 514; *re Barker*, 1881, 17 Ch.D. 241; *re Pickard*, 1885, 53 L.T., N.S., 293; and see cases cited in note 1.

Sec. 118 (1)-(3).

This subsection re-enacts the first clause of sec. 118 of the Lunacy Act 1853 (16 & 17 Vict. c. 70).

The Judge.—See sec. 108, subs. (1), *ante*.

May order.—As to carrying order into effect, see sec. 124, *post*.

Under this order.—As to when a Judge's order is necessary for repairs and improvements, see *ante* p. 363.

Distinction between repairs and improvements

Improvement.—A distinction is drawn between repairs and improvements in so far as the incidence of the cost of them is concerned, viz. that the costs of ordinary repairs on a lunatic's real estate ought to be borne by the personal estate,[1] while those of improvements, and of repairs amounting to improvements,[2] may properly be charged upon the realty.[3] As to authorised improvements, see sec. 25 of the Settled Land Act 1882, and sec. 13 of the Settled Land Act 1890.

The property.—See definition of, sec. 341, *post*.

Lunatic.—See definition of, sec. 341, *post*.

Interest.—See subs. (2), *inf*.

Charge.[4]—See subs. (3), *inf*.

re Vavasour.

Any other property.—In sec. 118 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70) the corresponding words were "the land, or such particular part thereof," as had been improved. In *re Vavasour*,[5] a case decided under that section, a lunatic was tenant for life of the H. estate, and tenant in tail in possession of the D. estate. Expenses were incurred by the committee in improvements on both, but chiefly on the former, and it was held that there was no jurisdiction to charge the D. estate with the expenses incurred on the H. estate. It is conceived, regard being had to the words in the present subsection, "any other property," that such a jurisdiction now exists.

(Payment of interest.)

(2) The interest shall be kept down during the lunatic's lifetime, out of the income of his general estate, as far as the same is sufficient to bear it.

This subsection re-enacts the second clause of sec. 118 of the Lunacy Regulation Act 1853 (16 and 17 Vict. c. 70).

(Charge to whom made.)

(3) The charge may be made either to some person

[1] *Re Badcock*, 1840, 4 My. & Cr. 440, and cp. *Sergeson* v. *Sealey*, 1742, 2 Atk. 413.

[2] *Re Harris*, 1827, Shelf. Lun. 276, where it was absolutely necessary that a farmhouse on the lunatic's real estate should be rebuilt; *re Child*, 1827, *ib.*; *re Clarke*, 1847, 2 Phill. 282; *re Skingley*, 1851, 3 Mac. & G. 221, where, however, the obligation of repairing was imposed on a lunatic by the terms of a devise; and cp. *Batthyany* v. *Walford*, 1886, 33 Ch.D. 630.

[3] Cp. *re Gist*, 1877, 5 Ch.D. 881, where the expenses of repairs and improvements to a large amount upon an estate of which a lunatic was tenant in tail in possession were ordered to be raised by mortgage or charge of that estate, although there was in Court a sufficient fund of personalty to which the lunatic was absolutely entitled, and his income was much more than was sufficient for his requirements.

[4] For the law prior to the Act of 1853 see *Foster* v. *Marchant*, 1684, 1 Vern. 262; *ex parte Marton*, 1805, 11 Ves. 397; *ex parte Hilbert*, 1805, *ib.*

[5] 1885, 29 Ch.D. 306.

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advancing the money, or if the money is paid out of the lunatic's general estate, to some person as a trustee for him, as part of his personal estate.

This subsection re-enacts the last clause of sec. 118 of the Lunacy Regulation Act 1853 (16 and 17 Vict. c. 70).

Power to dissolve partnership.

119. Where a person being a member of a partnership becomes lunatic, the Judge may, by order, dissolve the partnership.

This section re-enacts the first clause of sec. 123 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Partnership.

Insane person may become partner.

Being a member of a partnership.—It is clear both upon principle and upon authority that an insane person may become a partner. This proposition necessarily follows from the fact that he may contract (as to contracts of lunatics, see *ante* pp. 8-16); and it is supported negatively by the series of cases which decide that supervening insanity does not *ipso facto* dissolve a partnership.[1] A dissolution of partnership could not, however, be obtained under this section if the partner was of unsound mind *before* he became a partner. But an application for a dissolution might be made in such a case under sec. 35 (*a*) of the Partnership Act 1890 (53 & 54 Vict. c. 39), cited below.

Dissolution of partnership, when not obtainable under this section.

Insanity of dormant partner.

The suggestion is hinted at in some of the cases that the Court will not dissolve a partnership on the ground of the insanity of a dormant partner.[2] It is clear, however, that this section, and sec. 35 of the Partnership Act 1890, apply as well to a dormant as to an active partner. The Court has, however, a discretion under both sections to refuse a dissolution, and in this connection the question whether a partner is active or dormant is of course one of considerable importance.

For definition of partnership, see sec. 1 of the Partnership Act 1890 (53 & 54 Vict. c. 39), and Lindley on Partnership, chaps. 1 and 2.

Lunatic.

Lunatic.—Lunatic means an idiot or person of unsound mind, sec. 341, *post*. The power may also be exercised under this section in the cases enumerated in sec. 116, subs. (1), (*b*), (*c*), (*d*), (*e*), and (*f*), *ante*. It will be observed that there is no express provision here as in sec. 35 (*a*) of the Partnership Act 1890 (*inf.*) that the unsoundness of mind must be permanent in order to justify a judicial dissolu-

Query whether permanent unsoundness necessary.

[1] Cp. *Wrexham* v. *Huddleston*, 1734, 1 Swanst. 514-518; and case of *Mr. Cambridge*, cited *ib.*, p. 517, *per con.* 2 Ves. sen. 34, 35; *Sayer* v. *Bennet*, 1784, 1 Cox 107; *Waters* v. *Taylor*, 1813, 2 V. & B., per Lord Eldon, L.C., at p. 303; *Jones* v. *Noy*, 1833, 2 My. & K. 125; *Kirby* v. *Carr*, 1839, 3 Y. & C. 185; *Milne* v. *Bartlet*, 1839, 3 Jur. 358; *Sadler* v. *Lee*, 1843, 6 Beav. 324; *Anon.*, 1855-56, 2 K. & J. 441; *Jones* v. *Lloyd*, 1874, L.R. 18 Eq. 265; *Helmore* v. *Smith*, 1887, 35 Ch.D., per Bacon, V.-C., at p. 442.

[2] Cp. *Sayer* v. *Bennet*, *ubi sup.*, at p. 109; *Waters* v. *Taylor*, *ubi sup.*

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tion of the partnership. It is unlikely, however, that anything short of this would be held practically, even if, which is not clear,[1] it were legally, sufficient.

The Judge.—See sec. 108, subs. (1), *ante.*

May.—The word "may" never means *must* or *shall.* It simply confers a power, and the Court will determine by looking at the object of the statute whether it is the Judge's duty to exercise it.[2] In exercising his jurisdiction under this section, the Judge in Lunacy will have regard to the benefit of the lunatic and his family, sec. 116, subs. (4), *ante.*

By order dissolve the partnership.—The law as to the relation of insanity to partnership may here appropriately be summarised.

Relation of insanity to partnership.

1. Unsoundness of mind is not a bar to any one becoming a partner (see note to "being a member, etc.," *sup.*), if he possesses sufficient capacity to enter into the contract. As to contractual capacity of the insane, see pp. 8-16.

1. Mere unsoundness of mind not bar to become partner.

2. The lunacy of a partner does not *ipso facto* dissolve a partnership (see cases cited *ante* p. 408, note 1), unless the articles contain a provision to that effect.

2. Lunacy does not *ipso facto* dissolve.

3. A partnership may, however, be dissolved judicially on the ground of the lunacy of a partner, either at the suit of a sane partner, or of sane partners, or at his own suit.

3. Judicial dissolution.

This jurisdiction is conferred by this section and by sec. 35 (*a*) of the Partnership Act 1890 (53 & 54 Vict. c. 39) which provides that—

Provisions of Partnership Act 1890.

> On application by a partner, the Court may decree a dissolution of the partnership
>
> (*a*) When a partner is found lunatic by inquisition, or in Scotland by cognition, or is shown to the satisfaction of the Court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee, or next friend, or person having title to intervene, as by any other partner.

Differences between sections in Lunacy and Partnership Acts.

The differences between these sections appear to be that only cases of supervening lunacy can be dealt with under sec. 119 of the Lunacy Act 1890 (see note to "being a member," *sup.*); that there is no express restriction of the right of the Court to intervene in that section to cases of permanent unsoundness of mind (but see note to "lunatic," *sup.*);

[1] See Lindley, p. 569, and sec. 35 (*b*), also definition of "Court" in sec. 35 of the Partnership Act 1890, cited *inf.*

[2] *Julius* v. *Bishop of Oxford*, 1880, 5 App. Cas. 235; *re Baker*, 1890, 44 Ch. D., at pp. 268 and 270.

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that it is applicable only where the proceedings are not contentious, and no question of the taking of disputed accounts is involved; that it is, however, applicable to cases falling short of positive unsoundness of mind (see sec. 116, subs. (1) (*d*), *ante*); and that the Judge's discretion is to be exercised with regard to the benefit of the lunatic and his family (*ib.* subs. (4), *ante*). Applications will, under the Rules in Lunacy 1892, r. 19, *post*, be made by summons before the Master; and as to procedure, see rr. 21-25, *post*.

The Court.

Application . . . the Court.—By sec. 46 of the Partnership Act 1890 "the Court" includes every Court and Judge having jurisdiction in the case.

When Judge in Lunacy has jurisdiction.

As all causes and matters for the dissolution of partnerships or the taking of accounts are assigned to the Chancery Division, *semble* that the Judge in Lunacy will have jurisdiction only in cases where there is no dispute as to the dissolution or the accounts. See also note as to differences, *sup.* As to procedure, see Rules in Lunacy, 1892, rr. 19 and 21-25, *post*.

Lancaster Palatine Court.

The Chancery Court of the County Palatine of Lancaster (53 & 54 Vict. c. 23, sec. 23), the Chancery Court of the County Palatine of Durham (52 & 53 Vict. c. 47), as regards persons and property subject to their jurisdiction, and, where the whole property, stock, and credits of the partnership do not exceed in amount or value the sum of £500, the County Courts (51 & 52 Vict. c. 43, sec. 67, and see secs. 68 and 69) have similar powers and jurisdictions to those exercised by the High Court. The application is made by an action to dissolve the partnership and take accounts. See 2 Dan. Ch. Pr. 1495-1507.

Application, how made.

County Courts.

In the case of County Courts the action must, when both plaintiff and defendant dwell or carry on business in one or more of the metropolitan districts (as to which see *Annual County Courts Practice*, p. 68), be commenced either in the plaintiff's district or the defendant's (51 & 52 Vict. c. 43, sec. 84);[1] in the rest of England and Wales it must be commenced in the Court within the district of which the partnership business was or is carried on (*ib.* sec. 85).

In Scotland the Court under this section means the Court of Session, and it does not appear that the Sheriff-Court has jurisdiction, whether the proceedings take the form of a petition for the appointment of a judicial factor or of an action of declarator.[2]

Found lunatic by inquisition.—See notes to sec. 90 of the Lunacy Act 1890, *ante*.

Cognition.—See Lorimer's Notes to Lindley on Partnership, cited in note 2, *inf.*, and Mackay's Manual of Practice, p. 129.

When proof of permanent unsoundness unnecessary.

Is shown . . . permanently unsound mind.—In the case of a lunatic so found by inquisition or by cognition, proof of the permanency of the unsoundness of mind is unnecessary.

The judicial dissolution of a partnership on the ground of the

[1] Cp. *Reg.* v. *Bloomsbury, C.C.*, 1890, 24 Q.B.D. 309.

[2] Lindley (Lorimer's Notes on Scotch Law), pp. 808, 809.

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insanity of a partner is ordered both for the protection of the lunatic[1] against possible claims and losses, and to relieve the other partners from a state of things which prevents the partnership contract from being properly carried out.[2] In order to justify such a dissolution the Court must be satisfied that the insanity is existing at the time of the application, and is both probably incurable[3] and of such a character as to render the partner incapable of performing his share in the partnership contract.[4] Medical evidence must be adduced to show that the unsoundness of mind will in all likelihood be permanent. In *re Anon.*[5] a partner while temporarily, and as the result of special circumstances, of unsound mind attempted to commit suicide. It was held by Page-Wood, V.-C., that although the circumstances that the conduct and state of mind of the partner in question were such as at once to destroy the confidence of the other partners, and to induce persons to withdraw their custom from the firm, and the malady under which he laboured might as easily have led him to attempt the life of one of his partners, yet they were not such as, in the absence of evidence that at the time of the application he was incompetent to manage the business of the partnership according to the articles, to warrant a dissolution.[6]

Evidence necessary for judicial dissolution.

Attempt to commit suicide.

In *Jones* v. *Noy*,[7] two solicitors entered into partnership for twelve years; one of them became lunatic before the twelve years were out,

Jones v. *Noy*.

[1] *Jones* v. *Lloyd*, 1874, L.R. 18 Eq., per Jessel, M.R., at p. 272.

[2] Cp. *Waters* v. *Taylor*, 1813, 2 V. & B., at p. 303, per Lord Eldon, L.C., and authorities cited *ante* p. 408, note 1.

[3] *Pearce* v. *Chamberlain*, 1750, 2 Ves. sen. 35.

[4] *Kirby* v. *Carr*, 1838, 3 Y. & C. 184; *Sadler* v. *Lee*, 1843, 6 Beav. 324; *Anon.*, 1855, 2 K. & J. 441.

[5] *Re Anon.*, 1855, 2 K. & J. 441; and cp. the Scotch case *Eadie* v. *MacBean's curator bonis*, 1885, 12 R. 660, 665. In *Sayer* v. *Bennet*, 1784, 1 Cox 107, Lord Kenyon directed an inquiry as to whether the defendant was in such a state of mind as to be able to conduct the business in partnership with the plaintiff in accordance with the articles; and cp. *Anon.*, *ubi sup.*, at pp. 448-9, per Page-Wood, V.-C. *Semble*, that the affirmative in such an inquiry would be with the party who had been of unsound mind, *re Anon.*, *ubi sup.* 449. It is in this connection that the question whether a partner is dormant or not (see *ante* p. 408) becomes of importance. The question is whether the partner is capable of fulfilling the specific engagement into which he has entered. In *Eadie's case*, *ubi sup.*, Lord President Inglis refused to decree a dissolution of a partnership where one member of the firm was incapacitated by paralysis, because under the articles personal services were not required of him.

[6] In *Helmore* v. *Smith*, 1887, 35 Ch.D., at p. 442, Bacon, V.-C., in commenting upon *re Anon.*, 1855, 2 K. & J. 441, said that the partner who had been insane "did not have it all his own way," because the Court considered on the facts then appearing that there must be a dissolution on the regular and proper terms, if there were good grounds for the Court, in the exercise of its equitable jurisdiction, declaring that the contract between the partners had come to an end by force of circumstances. This observation is rather misleading. In *re Anon.* the other partners moved for an interim injunction to have the partner who had been insane restrained from interfering in the partnership affairs, while he presented a cross motion. Page-Wood, V.-C., dismissed the former and gave effect to the latter, costs being reserved, or made costs in the cause if the case did not come to hearing. The partner in question thus "did have it all his own way," and there are several passages in the judgment (see pp. 452, 453-57) which show that "the facts then appearing" would not, if they had existed at the trial, have constituted a ground for dissolution.

[7] 1833, 2 My. & K. 125.

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and subsequently died. The surviving partner continued to carry on the business for some time, but eventually sold it. It was held that the legal personal representative of the lunatic was entitled to a share of the profits up to the time of the sale, inasmuch as the lunacy of a partner is not *ipso facto* a dissolution of the partnership, but only a ground for dissolution if the other partner or partners apply to the Court for a decree.

Rowlands v. *Evans.*

In *Rowlands* v. *Evans*, and *Williams* v. *Rowlands*,[1] three persons, having obtained a mining lease for sixty years, entered into partnership for that period. One of them became lunatic. A bill was filed by the sane partners for a dissolution, the committees of the lunatic filed a cross bill for the appointment of a manager, on the ground—which was admitted to be true—that the affairs of the partnership could be carried on to the advantage of all parties notwithstanding the lunacy. Romilly, M.R., held, however, that the Court could not appoint a manager to carry on the business, and dissolved the partnership, directing the whole concern to be sold by an independent person, with liberty to the parties to bid.

Dibbins v. *Dibbins.*

In *Dibbins* v. *Dibbins*,[1] A. and B. agreed by articles of partnership that if either partner should die the other might purchase the deceased partner's share on certain terms, upon giving to his legal representative notice within three months from the death. A. died during the partnership. B. had meanwhile become of unsound mind. Just before the time for the exercise of the option expired, C., purporting, but without authority, to act for B., gave notice to purchase A.'s share. Shortly after the time expired B.'s committees, pursuant to an order in lunacy, gave a similar notice. Chitty, J., held that neither of the above notices was effectual, as C. had no authority, and the doctrine of ratification did not validate the notice given by the committees.

On behalf . . . committee.—Cp. *Beall* v. *Smith*.[2]

"Next friend."

Next friend.—Before the Partnership Act 1890, while it was settled that a person who had become permanently insane, but had not been so found by inquisition, might maintain a suit by his next friend for the protection of property in which he was interested as a partner, it was doubted whether a decree for final dissolution could be made in such a suit without the appointment of a committee in lunacy.[3]

[1] 1861, 30 Beav. 302. In this case the partnership articles provided that upon the sale by a partner of his share the co-partners should have a right of pre-emption. Notice of an intention to sell was given by one partner to the second, who afterwards became insane before the time for exercising the option had expired, and the option not having been exercised by the second partner while sane, nor by his committee, who had sold to the third partner, Romilly, M.R., held that the right of pre-emption had expired. It is respectfully submitted that this decision is not an authority for the proposition apparently suggested in Lindley (Partnership, p. 567 n. (*d*)), that such a right of pre-emption could not pass to a committee. On the contrary, Romilly, M.R., was disposed to hold that the notice to the lunatic bound the committee. Cp. *Dibbins* v. *Dibbins*, 1896, 44 W.R. 595.

[2] L.R., 1874, 9 Ch. 85-92.

[3] *Jones* v. *Lloyd*, 1874, L.R. 18 Eq. 265; *Light* v. *Light*, 1858, 25 Beav. 248; and *Fisher* v. *Melles*, 1870, cit. L.R. 18 Eq., at p. 268.

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As to the position of next friends, see notes to R.S.C. 1883, Ord. xvi. r. 16, *post*, and 1 Dan. Ch. Pr. 111-113; also *Beall* v. *Smith*, *ubi sup.*

Person having title to intervene.

Person having title to intervene.—These words are probably inserted to meet the case of procedure in Scotland, where "committees" and "next friends" are unknown. The words include tutor-at-law, tutor dative, and *curator bonis*, but probably not a person who is merely entitled to sue out a brieve of cognition or apply for the appointment of tutor dative or *curator bonis*, since until the office is taken up or the appointment made there is no title to intervene.[1]

Clause in articles for dissolution of partnership.

A clause in partnership articles enabling any partner to determine the partnership by notice to the others may be acted upon although one of the partners has become insane—"for the partner serving the notice is not bound to find understanding for him that is served."[2] Such a notice having been once served cannot, however, be withdrawn. The notice puts an end to the partnership, and the person withdrawing cannot, without the consent of the other party, say, "I will become a partner again."[3]

Date from which dissolution decreed.

The date from which a dissolution will be decreed is (*a*) in the case of a partnership at will, the time fixed by notice of dissolution duly given,[4] or, if no notice is provided, from the time of proceedings for dissolution being taken;[5] (*b*) in the case of a partnership not at will, where the articles authorise a dissolution, the date at which the partnership was so dissolved;[6] (*c*) in all other cases the date of the decree.[7]

Costs of dissolution.

When the Court dissolves a partnership on the ground of insanity, it directs the costs to be paid out of the partnership assets.[8]

Restoration of insane partner on recovery.

An insane partner is entitled on recovery, where no dissolution has taken place, to be restored to his former position in the firm, and the Court will, if necessary, so restore him and restrain the other partners from preventing him from resuming his share of the partnership business.[9] Where an action is pending for the dissolution of a partnership on the ground of insanity, the Court will grant an injunction to restrain the defendant from interfering in the conduct of the partnership affairs so as to injure the business and assets of the firm.[10]

As to service of writs on lunatic partners, see R.S.C. 1883, Ord. ix. r. 5. See form of judgment in action against partner in Seton, 5th ed., p. 1814.

[1] Lorimer's Notes to Lindley on Partnership, pp. 799, 800.

[2] *Robertson* v. *Lockie*, 1846, 15 Sim. 285; and cp. *Mellersh* v. *Keen*, 1859, 27 Beav. 236; and *Jones* v. *Lloyd*, *ubi sup.*

[3] *Jones* v. *Lloyd*, *ubi sup.*

[4] Cp. *Mellersh* v. *Keen*, *ubi sup.*, and Partnership Act 1890, sec. 32.

[5] Cp. *Kirby* v. *Carr*, 1838, 3 Y. & C. 184, where in such a case the date of the filing of the bill for dissolution was taken; and *Shepherd* v. *Allen*, 1864, 33 Beav. 577.

[6] *Robertson* v. *Lockie*, 1846, 15 Sim. 285; *Bagshaw* v. *Parker*, 1847, 10 Beav. 532.

[7] *Besch* v. *Frolich*, 1842, 1 Ph. 172; and cp. *Sander* v. *Sander*, 1845, 2 Coll. 276, and *Jones* v. *Welch*, 1855, 1 K. & J. 765, where, however, the nature of the partnership does not appear, but in both of which *Besch* v. *Frolich* was mentioned.

[8] *Jones* v. *Welch*, *ubi sup.*

[9] Cp. *Anon.*, 1855, 2 K. & J. 441.

[10] *J.* v. *S.*, 1894, 3 Ch. 72.

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Apprentices.

A contract of apprenticeship would probably be dissolved by the Court on the same principles on which it dissolves a partnership—if either party became incapable by insanity from performing his duties under the articles. In *ex parte Turner*,[1] where a solicitor to whom a clerk had been articled became insane during the clerkship, the Court discharged the articles without any assignment, and allowed the clerk to enter into fresh articles for his term of service. The interval between the incapacity of the master and the completion of the new contract was not, however, allowed to be counted as part of the requisite period of service. It seems that justices may discharge a parish apprentice who becomes insane, "it being hard the master should keep one who could do him no service, and the parish in the meantime go free."[2]

Semble, the absence of a servant from insanity does not operate as a dissolution of the contract of service.[2]

Powers exerciseable by committee under order of Judge.

120. The Judge may, by order, authorise and direct the committee of the estate of a lunatic to do all or any of the following things :—

((*a*) Sale.)

(*a*) Sell any property belonging to the lunatic ;

The Judge.—See sec. 108, *ante*.

May.—See sec. 116, subs. (4), *ante ;* and *inf.* as to considerations which are to guide the Judge in the exercise of his discretion under this part of the Act.

The committee of the estate.—As to person by whom powers of are exerciseable in case of lunatics not so found, see sec. 116, subs. (2), *ante*.

As to position, etc., of, see *ante* p. 347.

Lunatic.—As to scope of term for purposes of management and administration, see sec. 116, subs. (1), *ante*.

(*a*) *Sell any property belonging to the lunatic.*

Sale, though not for price paid down.

Sell.—The Court has power under this clause to order a sale, though it is not for a price to be paid down at once, but a perpetual rent-charge.[3]

Property.

Property includes real and personal property, whether in possession, reversion, remainder, or expectancy, and any estate or interest, and any undivided share therein (sec. 341, *post*).

Sale of undivided share of land.

Under the corresponding provisions in the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70, secs. 124, 125) it was held that there was no jurisdiction to order a sale of a lunatic's undivided share of

[1] 1841, 10 L.J., N.S., Q.B. 356.

[2] *Anon.* 35 Car. II., Skin. 114 ; *R.* v. *Charles*, 1772, Burr. Sett. Cas. 706; *R.* v. *Sutton*, 1794, 5 T.R. 660 ; *R.* v. *Hulcott*, 1796, 6 T.R. 583.

[3] *Re Ware*, 1892, 1 Ch. 345, at p. 347. Query, however, per Lindley, L. J., whether this method of sale could be adopted by trustees acting under an ordinary power of sale. The *ratio decidendi* was that an enactment for the benefit of a lunatic ought to receive a wide rather than restricted construction.

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land to the owner or owners of other undivided shares,[1] or of land to which the lunatic was merely entitled as tenant for life.[2] As an instance of the strictness with which the old law was applied, *re Tomkins*[3] may be referred to. It was there held by Cotton, Bowen, and Lindley, L.JJ., that where a lunatic was seised in fee-simple of lands on which there was a house that was burnt down, the land could not be sold under sec. 125 of the Act of 1853, authorising land to be sold that it may be "made available for building purposes," to a person intending to build thereon, inasmuch as the real object was to rebuild a house that had been burnt down.

re Tomkins.

It is submitted that under clause (*a*) of sec. 120 of the Act of 1890, taken in conjunction with the definition of property in sec. 341, *sup.*, these decisions are no longer binding.

Sec. 62 of the Settled Land Act 1882 provides that "where a tenant for life, or a person having the powers of a tenant for life under this Act, is a lunatic, so found by inquisition, the committee of his estate may, in his name and on his behalf, under an order of the Lord Chancellor, or other person entrusted by virtue of the Queen's sign manual with the care and commitment of the custody of the persons and estates of lunatics, exercise the powers of a tenant for life under this Act; and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate."

Settled Land Act 1882.

This section applies only to lunatics who have been so found by inquisition.[4] But if under sec. 116, subs. (1) (*d*), *ante*, of the Lunacy Act 1890, a tenant for life—although not found lunatic by inquisition—has been found incapable of managing his affairs, and a person has been authorised to receive the rents of and let and manage the settled estate, the Court has power under secs. 120 and 128 of the Lunacy Act 1890 to authorise that person to exercise a power of sale invested in him by the settlement.[5] It was held in *re Salt*[4] that leasing powers under the Settled Land Act 1882 may be exercised under sec. 120 (*h*), *post*. This case is distinguishable from *re Baggs*,[4] inasmuch as while the exercise of such leasing powers is expressly included in sec. 120 (*h*), this clause contains no express mention of any power of sale by a limited owner. Under sec. 124 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70) it was held, as above mentioned, that an order could not be made for the sale of a lunatic's undivided share of land to the owner of the other shares.[6] But such an order could be made under sec. 62 of the Settled Land Act 1882.[7]

Application only to lunatics so found.

Secs. 120 and 128 of Lunacy Act 1890. Leasing powers.

[1] *Re Weld*, 1885, 28 Ch.D.,514; and *re Woolhouse*, 1858, cit. *ib.* 515 n. (1). But the Court would give leave to the committee of a lunatic tenant in tail to take proceedings under the Settled Land Act 1882, sec. 62, for the sale of his undivided shares to the owner of the other shares (*re Gaitskell*, 1889, 40 Ch.D. 416).

[2] *Re Corbett*, 1866, L.R. 1 Ch. 516; and cp. *re Newton, re Molyneux*, Reg. Lib. 1865, and *Dodd* v. *Wake*, 1852, 5 De G. & Sm. 226, as to the interest in personalty.

[3] 1889, 60 L.T., N.S., 402.

[4] *Re Baggs*, 1893 (1894), 2 Ch. 416 n. Cp. *re Salt*, 1896, 1 Ch. 117.

[5] *Re X.* (1894), 2 Ch. 415.

[6] *Re Weld, ubi sup.*

[7] *Re Gaitskell, ubi sup.* In that case the Court refused to sanction the particular contract proposed, as they had not gone into the objection to it, but

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Semble, that it could now be made under clause (*a*) of sec. 120 of the Lunacy Act of 1890.

Cases not provided for by Settled Land Act 1882.

It is pointed out by Hood and Challis (4th ed., *Conveyancing Acts*, p. 286) that sec. 62 of the Settled Land Act 1882 does not provide for the case of (*a*) a lunatic married woman who is not entitled to her separate use by contract, or as a *feme sole* by virtue of the Married Women's Property Act 1882, see sec. 61 of that Act, or (*b*) such a married woman having a lunatic husband; but that in either case it would probably be held that the committee might act on behalf of the lunatic.

In the case of a lunatic infant the ordinary provisions of the Settled Land Acts (secs. 59 & 60, Settled Land Act 1882) apply.[1]

Authority of Court necessary to notice under sec. 45 Settled Land Act 1882.

The committee of a lunatic tenant for life cannot give a valid notice under sec. 45 of the Settled Land Act 1882 of intention to exercise the statutory powers unless he has previously obtained authority from the Court in Lunacy to do so,[2] and if no trustees are in existence, new trustees must be appointed for the purposes of the Act.[3]

Trustees of settlement necessary. Settled Estates Act 1877. When recourse to necessary.

Notwithstanding the extension of powers and simplification of procedure by the Settled Land Act 1882, there are still a few cases in which it may be necessary to have recourse to the Settled Estates Act 1877,[4] *e.g.* where there are no trustees of the settlement and it is undesirable or impossible to appoint any; as to grants at fee-farm rents; as to the laying-out and dedication of streets; where the tenant for life is not a single person, etc.

Sec. 49 of that statute enacts, *inter alia*, "all powers given by this Act, and all applications to the Court under this Act, and consents to and notifications respecting such applications, may be executed, made, or given by, and all notices under this Act may be given by or to committees on behalf of lunatics: Provided nevertheless, that in the case of lunatic tenants in tail no application to the Court or consent to or notification respecting any application may be made or given by any committee without the special direction of the Court."

Authority of Court in Lunacy necessary. How obtained.

Before a committee can make or assent to any application, or give a notification under this statute, he must obtain the authority of the Court in Lunacy,[5] to be applied for, unless the Judge or Master in Lunacy otherwise order, by a summons at Chambers before the

gave leave in general terms to sell to the co-owner.

[1] Cp. *Beall* v. *Smith*, 1873, L.R. 9 Ch., at p. 92; *re Edwards*, 1879, 10 Ch.D. 605; and *re Ray*, 1896, 1 Ch. 468.

[2] *Re Ray's Settled Estates*, 1884, 25 Ch.D. 464. The notice must be notice of a specific sale or lease contemplated at the time when the notice is given (*ib.*) The powers conferred on the Court under sec. 36 of the Settled Land Act 1882 (petitions to Parliament, etc.), are not "powers of a tenant for life" within the meaning of sec. 62 of that statute (*re Blake*, 1895, 39 S.J. 330). Trustees of the settlement, if none are in existence, must be appointed under sec. 38 of the Settled Land Act 1882, before the powers under sec. 62 can be exercised. The new trustees must be served with notice of the committee's petition (*re Taylor*, 1883, 31 W.R. 596).

[3] *Re Taylor*, 1883, 52 L.J., N.S., Ch. 728.

[4] Dart's V. & P. 1294-5.

[5] *Re Woodcock's Trusts*, 1868, L.R. 3 Ch. 229.

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Master.[1] The authority, which takes the form of the Master's certificate, must be produced by the committee in support of his application, and the Court may then direct him to act in conformity with the authority. Where, however, a lunatic is tenant in tail, special directions from the Chancery Division must also be obtained. These are to be obtained, after the presentation of the petition by the petitioner, on summons in Chambers, and the summons must be served on the committee.

When lunatic tenant in tail.

The Settled Estates Act 1877 does not expressly provide for the case of persons of unsound mind not so found by inquisition. Under the Leases and Sales of Settled Estates Act 1856 (19 & 20 Vict. c. 120)—the first statute of the class—it was held, in *re Venner's Settled Estates*,[2] by Lord Romilly, M.R., on an *ex parte* application, that the consent of a person of unsound mind not so found by inquisition might be given by a guardian appointed by the Court for the purpose. But in *re Clough's Estate*,[3] where however the purchaser took an objection to the title, James, L.J., declined to follow that authority. In *re Crabtree's Settled Estates*[4] it was held that under sec. 2 of the Settled Estates Amendment Act 1874 (37 & 38 Vict. c. 33)—which was passed subsequently to the dates of the two cases above cited—a person of unsound mind not so found by inquisition, whose consent was required to a petition under the Settled Estates Act, might be served with a notice requiring him, in the terms of that section, to notify within a time specified whether he assented to or dissented from the application, or submitted his rights and interests, so far as they might be affected by it, to be dealt with by the Court. There is a similar provision in sec. 26 of the Settled Estates Act 1877, under which the case of a person of unsound mind could be dealt with. The notice is to specify to whom and in what manner the notification is to be delivered or left; and in case no notification is delivered or left in accordance with the notice, and within the time thereby limited, the person of unsound mind will be deemed to have submitted his rights and interests to be dealt with by the Court.

Persons of unsound mind not so found.

The Court may dispense with notice if it cannot be given without expense disproportionate to the subject-matter of the application, where the rights or interests of the person of unsound mind are small or remote, or similar to those of other persons before the Court,[5] and may make an order on any application without the concurrence or consent of any such person.[6]

Notice, when dispensed with.

Sec. 7 of the Lands Clauses Consolidation Act 1845 (8 & 9 Vict. c. 18) enables the committees of a lunatic, and the trustees of a lunatic *cestui que trust*, so found, to sell, convey, or release land on his behalf as freely as he himself if sane might have done. Here again,

Lands Clauses Consolidation Act 1845, s. 7.

[1] Rules in Lunacy 1892, r. 20, *post*.
[2] 1868, L.R. 6 Eq. 249.
[3] 1873, L.R. 15 Eq. 284.
[4] 1875, L.R. 10 Ch. 201.
[5] Cp. sec. 27 of the Settled Estates Act 1877; *re Franklin's Settled Estate*, 1858, 7 W.R. 45 (remote and contingent interest); *re Turbutt's Estate*, 1863, 2 N.R. 158 (lunatic had present right to definite annual sum out of the property); and cp. *re Marquis of Cholmondley*, 1866, W.N. 1866, 388.
[6] Cp. sec. 28 of the Settled Estates Act 1877.

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Sanction of Judge in Lunacy necessary.

Costs of application.

however, the sanction of the Judge in Lunacy must first be obtained by the committee,[1] and also by the railway company before proceeding to exercise their compulsory powers.[2] Applications for the sanction of the Judge in Lunacy are to be made, unless the Judge or Master otherwise orders, by summons returnable before the Master (Rules in Lunacy 1892, r. 20). The costs of the application are costs within the 80th sec. of the Lands Clauses Consolidation Act 1845, and must be borne by the company.[3]

Sec. 7 of the Act of 1845 does not apply to persons of unsound mind not so found by inquisition.[4] It does not seem that railway companies could proceed in such cases by way of deposit and deed-poll. See secs. 76 and 77 of the Act of 1845.

Special provision relating to lunatics.

Promoters not to purchase more than prescribed quantity.

The following special provisions in the Lands Clauses Act, relating to lunatics, require to be noted. The promoters of an undertaking may not, by virtue of any power to purchase land for extraordinary purposes, purchase more than the prescribed quantity from any lunatic; and if they sell the whole or any part of the land so purchased, the lunatic may not sell them other land in lieu of it (sec. 14).

Amount of purchase-money, how ascertained.

The amount of the purchase-money or compensation, except where determined by the verdict of a jury or by arbitration, or by the valuation of a surveyor appointed by two justices under sec. 36, is to be ascertained by two practical surveyors, one nominated by the promoters, the other by the other party, and if they cannot agree, by a surveyor appointed by two justices on the application of the other (sec. 9).

Purchase money, how to be dealt with. £200 or upwards.

Purchase or compensation money for the land of a lunatic so found, or any interest thereon, if amounting to or exceeding £200, is paid into the bank, to the account of the Postmaster-General—*ex parte* the promoters of the undertaking in the matter of the special Act—and remains so deposited till it is applied to some one or more of the purposes specified in the Act and enumerated below (sec. 69 and 70). Till it can be so applied, it may be invested by the Postmaster-General, on an order to be obtained by application to the Chancery Division, in Consols, or Bank Annuities, or in Government or real securities, and the interest, dividends, and annual proceeds are to be paid to the committee (sec. 70). These provisions as to payment into Court are, however, only directions for the safe custody of the purchase-money, and accordingly where lands belonging to a lunatic had been purchased by a railway company under the powers of its Act, an order was made for payment of the purchase-money to the credit of the lunacy without its first being paid into Court. The application for such an order must not be made in the Lunacy only, but in the Chancery Division.[5]

[1] *Re Taylor*, 1849, 1 Mac. & G. 210, 6 Rail. 741; and cp. *re Wade*, 1849, 1 H. & T. 202.

[2] Cp. *Tink* v. *Rundle*, 1847, 10 Beav. 318 (a case of infancy). A railway company neglecting to obtain such sanction would be liable to be restrained by injunction.

[3] *Re Taylor*, *ubi sup.*; and cp. *re Briscoe*, 1864, 2 De G. J. & S. 249; *re Walker*, 1851, 7 Rail. 129.

[4] *Re Tugwell*, 1884, 27 Ch.D. 309, overruling *ex parte Flamank*, 1851, 1 Sim., N.S., 260.

[5] *Re Milnes*, 1875, 1 Ch.D. 28.

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Sums between £20 and £200 may be either deposited in the manner above described, or paid to trustees nominated by the committee and approved by the promoters (sec. 71).

Sums between £20 and £200.

Sums not exceeding £20 are to be paid to the committee (sec. 72).

Not exceeding £20.

Moneys deposited or paid to trustees under the above-mentioned sections may be applied to one or more of the following purposes (cp. sec. 69):—

Application of moneys.

1. In the redemption of the land tax or the discharge of any incumbrance affecting the land, or affecting other land settled therewith to the same or the like uses.

1. Redemption of land tax.

2. In the purchase of other lands,[1] to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner as the lands in respect of which such money shall have been paid stood settled.

2. Purchase of other lands.

3. If such money shall be paid in respect of any buildings taken under the authority of the Acts, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Chancery Division of the High Court shall direct.

3. Removing or replacing buildings, etc.

4. In payment to any party becoming absolutely entitled to such money.

4. Payment to party entitled.

An order for the application of money to any of these purposes may be obtained by the committee of the lunatic (sec. 70), who must also first procure the leave of the Court in Lunacy, see *ante* p. 416.

Order for application, how obtained.

As to application of purchase or compensation money generally, see Hodges on Railways, 6th ed. chap. vii.; and Cripps on Compensation, 3rd ed. chap. xvii.

(*b*) Make exchange or partition of any property belonging to the lunatic or in which he is interested, and give or receive any money for equality of exchange or partition;

((*b*) Exchange or partition.)

This clause is based on sec. 124 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Exchange.—The Court has power under this section to make an exchange of the lands of a lunatic without the minerals under it;[2] and see clause (*e*), *post.*

"Exchange."

[1] Of a similar character. In *re Cann's Estate*, 1849, 19 L.J., N.S., Ch. 376, Knight-Bruce, V.-C., doubted whether copyhold could be substituted for freehold land, but made the order on the Master's report that the purchase was for the benefit of the lunatic. In *ex parte Macaulay*, 1854, 23 L.J., N.S., Ch. 815, he doubted the soundness of his decision in *re Cann's Estate*, and ultimately refused to extend it to leaseholds. An investment in guaranteed railway stock has been permitted—the name of the public body being omitted from the title of the account—the proposed investment being regarded as a reinvestment in land (*re Buckingham*, 1876, 2 Ch.D. 690); and where property taken by a corporation under the Act was a rent-charge in favour of the lunatic, the Court authorised a Government annuity of the same amount for the lunatic's life (*re Brewer*, 1875, 1 Ch.D. 409).

[2] *Re Dicconson*, 1880, 15 Ch.D. 316.

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"Partition."

Partition.—The Court under its lunacy jurisdiction has power to bar the estate tail of a lunatic tenant in tail, but will exercise this jurisdiction so as not to affect the rights of the persons entitled in remainder to the estate.[1] Where in a suit for the partition of lands of which a lunatic is entitled to an undivided share, a partition has been ordered, and the lunatic declared trustee within the Trustee Act 1893, sec. 31 (replacing sec. 30 of the Trustee Act 1850), the partition may be carried out by an order made under both Acts (the Trustee Act 1893 and the Lunacy Act 1890), authorising the committee to convey,[2] or by an immediate vesting order under the Trustee Act alone.[3] In the latter case, however, the vesting order will not be drawn up until the conveyance to the lunatic has been executed and produced to the registrar.[3] It seems that the lunatic's costs of obtaining the partition may be raised by mortgage of the land allotted to the lunatic in severalty if, but only if, the conveyance provides for this.[4] In *re Sherard*[2] the lunatic's costs were directed to be raised out of a sum of Consols allotted to her on a partition.

Costs of obtaining partition.

As to right of next of kin to bring partition actions, see notes to R. S. C. 1883, *post.*

Property.—See definition of, sec. 341, *post*, and note to clause (*a*), *ante.* The property exchanged is to be to the same uses as before, see sec. 121.

Lunatic.—Definition of, sec. 341, *post.*

Give.—It is noteworthy that there is no provision in sec. 123, subs. (2), *post*, as to the character of money *given* for the equality of partition. See notes to that subsection.

Money for equality, etc.—As to, see sec. 123, subs. (2), *post.*

("(*c*) Carry on trade or business.")

(*c*) Carry on any trade or business of the lunatic;

This clause is borrowed from sec. 12 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86), which enabled the Lord Chancellor and Lords Justices in the case of lunatics, not so found, with small properties to make orders for the purpose of rendering the property available for the maintenance or benefit of the lunatic, or for carrying on his trade or business.

State of lunatic's business. Order for carrying on, when made. Form of.

The state of the lunatic's business is dealt with by the Master in his inquiries after inquisition (see Rules in Lunacy 1892, r. 31 (*e*) (*f*), *post*), and appears in his certificate. An order will only be made under this clause if the Judge is satisfied that it is for the benefit of the lunatic that the trade or business should be carried on; and (see Elmer, p. 96) the order usually directs that the committee shall pass

[1] *Re Pares*, 1879, 12 Ch.D. 333; and cp. *re Blewitt*, 1856, 6 De G.M. & G. 187, overruling *re Blewitt*, 1834, 3 My. & K. 250, and *re Wood*, 3 My. & Cr. 266.

[2] *Re Bloomar*, 1857, 2 De G. & J. 88; *re Sherard*, 1863, 1 De G. J. & S. 421.

[3] *Re Molyneux*, 1862, 10 W.R. 512, disposing of a doubt raised in *re Bloomar, ubi sup.*

[4] *Re Bloomar*, 1860, 2 De G. F. & J. 154. Here this precaution had not been taken. The difficulty was, however, got over by indorsements of the costs or charges on the deeds (*ib.* 157, note (*a*)). See Form of Order in Seton, 5th ed., p. 1064, No. 16, and *Moorehead* v. *Moorehead*, 1868, I.R. 2 Eq. 492.

such half-yearly or other accounts as the Masters may direct, and that if at any time on passing the accounts the Masters are of opinion that the business should cease, the proper steps will be taken for winding it up.

(*d*) Grant leases of any property of the lunatic for building, agricultural, or other purposes;

((*d*) Leases, building and agricultural.)

This clause is based on sec. 129 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Grant leases.—The committee of the estate cannot grant leases[1] of the lunatic's land of his own authority,[2] for he has no interest in the estate, and is regarded as a mere bailiff; and in one case where the committee, in conjunction with the wife and heir-at-law of the lunatic, had let the estate at a certain rent without obtaining the sanction of the Court, and three years afterwards the Master found that a larger rent might have been obtained, he was held responsible for the amount of such larger rent, and ordered to pay all the costs occasioned by his having let the land at an undervalue.[3] It appears, indeed, that prior to 43 Geo. III. c. 75, sec. 3, and the other statutes containing provisions similar to that of the clause under consideration,[4] such leases could not be made even by order of the Court,[5] although orders seem to have been made for granting leases if the lunatic should so long live and continue a lunatic.[6]

Committee cannot grant of his own authority.

Formerly could not be made even by order of Court.

On the principle, however, that the Court will do on behalf of a lunatic what a just and reasonable owner would do, the Court may confirm an agreement to grant a lease entered into by a committee without its sanction.[7] *Re Wynne*[7] is an illustration of the kind of case in which this power will be exercised. A gentleman entered into an arrangement by letter with the land-agent who acted for the committee of a lunatic's estate to take a lease of part of the estate for a term of three years. No formal agreement was entered into, nor was the sanction of the Master in Lunacy applied for, but the tenant was let into possession, and expended a considerable sum in repairs and improvements. After he had been nearly eighteen months in possession, the committee gave him six months' notice to quit, upon which he applied by petition to have the terms of his arrangement with the land-agent carried into effect. The Court made an order giving effect to the arrangement.

Court may confirm agreement by committee without sanction. *re Wynne.*

As to the extent of the leasing power, see sec. 122, subs. (2), *post.*

Applications for the sanction of the Court to proposed leases are,

[1] He may, however, and ought to, let the land from year to year in proper cases (Elmer, p. 86).

[2] *Foster* v. *Marchant*, 1684, 1 Vern. 262; *Knipe* v. *Palmer*, 1760, 2 Wils. 130.

[3] *Re Wilkins*, 1842, 6 Jur. 308.

[4] As to these statutes and the practice under them, see Shelf. Lun. 439 *et seq.*

[5] *Ex parte Dikes*, 1802, 8 Ves. 79; and *Knipe* v. *Palmer*, *ubi sup.*

[6] *Re Davies*, 1779, Shelf. Lun. 439; *re Stephenson*, 1779, *ib.*

[7] *Re Wynne*, 1872, L.R. 7 Ch. 229.

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Applications for sanction, how made. Summons. Affidavit.

unless the Judge or Master in any particular case otherwise directs, made by summons at Chambers before the Master (Rules in Lunacy 1892, r. 19, *post*), supported by evidence on affidavit as to the nature and value of the property in question, the position and character of the proposed tenant, etc. The Master, if satisfied by the evidence that the proposed lease is desirable, makes out his certificate accordingly. Where an order is made authorising a lease of a lunatic's property, the Master settles a proper lease in pursuance of the order, and signs his allowance of the lease when settled; and the committee of the estate in the name [1] and on behalf of the lunatic [1] executes the lease when allowed, upon the intending lessee executing a counterpart of it (Rules in Lunacy 1892, r. 122, *post*).

Certificate. Lease, settlement of. Allowance of. Execution of.

As to sums of money received on grant of leases, see sec. 123, subs. (2), *post*.

Costs.

The costs incurred in connection with applications for leases are taxed by the Taxing Master.

Committee pays expenses of inquiry.

The committee pays the expenses of the inquiry out of the fine, if any, received upon the lease, of the rent and profits of the lunatic's estate.

Lessee expenses of lease and counterpart.

The costs and expenses of the lease and counterpart are borne by the lessee.[2]

Lease of lunatic's lands by auction.

The lands of lunatics were at one time not infrequently let by auction to the highest bidder.[3] But the practice has gradually fallen into comparative disuse, owing apparently to the feeling that it was unfair to the old tenant.[4]

Lease not granted to committee of estate.

A lease of a lunatic's property will not be granted to the committee of the estate, even although he was entitled to the property in question next in remainder expectant upon the death of the lunatic.[5]

Building purposes.

Building . . . purposes.—In *re Starkie*,[6] Lord Eldon refused to sanction the granting of a building lease for 999 years, though the Master had reported in favour of it. But see sec. 122, subs. (2), *post*.

(*e*) Leases of minerals.)

(*e*) Grant leases of minerals forming part of the lunatic's property, whether the same have been already worked or not, and either with or without the surface or other land;

[1] The committee will therefore sign as follows: "A.B. (the alleged lunatic) by C.D." (his committee). If the committee were, however, to sign his own name alone—a course which is to be avoided—the execution would still, it is thought, be valid, if it appeared from the whole deed that he was acting as committee. See *Lawrie* v. *Lees*, 1880, 14 Ch.D. 256, and 1881, 7 App. Cas. 19.

[2] *Ex parte Prickett*, 1818, 3 Swanst. 130, and Elmer, p. 88.

[3] Cp. *re the Earl of Portsmouth*, 1828, Shelf. Lun. 445.

[4] Cp. *re Ball*, 1828, 1 Moll. 141.

[5] *Re Sir Thos. Smyth*, 1829, Shelf. Lun. (ed. 1833) 347. In this case, however, the committee was allowed to occupy the property at a rent, and on conditions fixed by the Master until further order.

[6] 1826, 2 Russ. 197.

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This clause is based on secs. 130 and 131 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Leases.—See definition of "lease," sec. 341, *post.*

Minerals.

Minerals.—Independently of any statutory authority, the committee, it seems, might work mines under the direction of the Court.[1] The profits derived from leases of mines that have already been worked form part of the general personal estate of the lunatic if he is entitled in fee-simple or in tail. As to profits derived from the mines of a tenant for life, see Settled Land Act 1882, sec. 11. Those derived from leases of unopened mines are governed by sec. 123, subs. (2), *post.*

Profits derived from leases of.

((*f*) Surrender of lease, etc.)

(*f*) Surrender any lease and accept a new lease;

This clause re-enacts in substance sec. 113 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), which again was based on 11 Geo. III. c. 20, and 11 Geo. IV. and 1 Will. IV. c. 65.

Lease.—See definition of, sec. 341, *post.*

Accept a new lease.—As to extent of leasing power, see sec. 122, subs. (2), *post.*

As to fines or other payments on renewal, see sec. 123, subs. (2), *post.*

Applications for renewal, how made.

Applications for renewal are, unless the Judge or Master otherwise order, to be made by summons returnable at Chambers before the Master (Rules in Lunacy 1892, r. 19).

Summons by committee.

The summons must be taken out by the committee, *and not by the tenant*,[2] and supported by title-deeds or such other evidence of title as the Master may require.

Costs of renewal.

The costs and expenses incurred in connection with the application will, in the absence of special arrangements,[3] be borne by the committee, while those of the lease and counterpart are thrown upon the tenant.[4] But this rule has been departed from.

A renewed lease is to be subject to the same trusts, etc., as before (sec. 121, *post*).

Renewal by committee for his own benefit, breach of trust.

If the committee of a lunatic renew a lease for his own benefit, he commits a breach of trust, and is liable to be removed.[5]

((*g*) Accept surrender, etc.)

(*g*) Accept a surrender of any lease and grant a new lease;

[1] *Ex parte Tabbart*, 1801, 6 Ves. 428; *re Percival*, 1822, Shelf. Lun. 443; *Humphreys* v. *Harrison*, 1820, 1 Jac. & W. 582.

[2] Cp. *ex parte Town*, 1823, T. & R. 137; *re Fitch*, 1830, 1 R. & M. 354 (cases of abatements in rent). It is said that Lord Brougham repeatedly dismissed such applications on the ground that they came from the tenant and not the committee. This rule appears to hold good even where there is a receiver of the lunatic's estate, and he makes the application, cp. *ex parte Prickett*, 1818, 3 Swanst. 130. If, however, the committee refused or failed to apply, the tenant would doubtless be held entitled to do so.

[3] Cp. *ex parte Barnes*, 1848, 17 L.J., N.S., Ch. 436.

[4] *Ex parte Prickett*, *ubi sup.*; and *re Townsend*, 1842, 2 Ph. 348.

[5] *Ex parte Phelps*, 1742, 9 Mod. 357.

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This clause re-enacts sec. 134 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

See notes to clause (*f*), *sup.*

((*h*) Execute power of leasing, etc.)

(*h*) Execute any power of leasing vested in a lunatic having a limited estate only in the property over which the power extends ;

This clause re-enacts the first clause of sec. 133 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

See also sec. 62 of the Settled Land Act 1882, and notes to clause (*a*), *ante*. Leasing powers under the Settled Land Act can be exercised under this clause. This was decided in *re Salt*,[1] a summons by the official solicitor, who had been appointed under section 116 of the Lunacy Act 1890 to exercise the powers of a committee of the estate of C. S., a person lawfully detained as a lunatic, though not so found by inquisition, for an order that he might be at liberty to execute a lease under the Settled Land Act 1882 of a public-house of which the alleged lunatic was tenant for life under the will of her late husband. The lease had been approved by the Master in Lunacy, subject to the question whether the Court had jurisdiction to make the order.

The Court of Appeal granted the application. They held that the power of leasing vested in the alleged lunatic as tenant for life under the Settled Land Act 1882, was expressly included in section 120 (*h*) of the Lunacy Act 1890, and they distinguished in *re Baggs*,[2] on the ground that section 120 contained no express mention of any power of sale by a limited owner.

As to disposal of fines, premiums, or money received for or on the granting of such leases, see sec. 123, subs. (2), *post.*

((*i*) Perform any contract, etc.)

(*i*) Perform any contract relating to the property of the lunatic entered into by the lunatic before his lunacy ;

This clause is founded on sec. 122 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Contract.—As to lunacy in relation to contract, see *ante* p. 8.

This clause is based on the principle that "Equity looks on that as done which ought to be done." In cases depending on contract, however, this maxim applies only in favour of persons entitled to enforce the contract, and cannot be invoked by volunteers.[3] A previous covenant by a person of sound mind will prevail against any subsequent incapacity. Thus in *Affleck* v. *Affleck*,[4] G. had on his marriage covenanted that if he came into possession he would

Affleck v. *Affleck.*

[1] 1896, 1 Ch. 117.
[2] 1894, 2 Ch. 416 (*n*).
[3] Cp. *re Anstis*, 1880, 31 Ch.D. 596.
[4] 1856-57, 3 Sm. & G. 394, 402.

exercise a power of jointuring which by the terms of a will conferring the power could be exercised only by a tenant for life in possession. G. before coming into possession became of unsound mind. Hall, V.-C., held that the covenant was a defective execution of the power, and enforced it against the remainder-man. The *ratio decidendi* was thus stated by the learned Judge: "The consent necessary to make the charge valid is considered as sufficiently manifested by the covenant, and the manifestation of consent at the date of the covenant before (the covenantor) was in possession makes his absolute dissent and refusal after he was in possession of no avail. But if a previous covenant by a person of sound mind operates as a charge upon the estate, as soon as the covenantor comes into possession, so as to prevail against his subsequent actual dissent or refusal, it must equally prevail against any subsequent mental incapacity. Having the power and capacity to execute is of the essence of the power just as much as a will and intention to execute—as much and no more."

Ratio decidendi of.

Property.—See definition of, sec. 341, *post*, and notes to clause (*a*), *ante*.

Lunatic.—Definition of, sec. 341, *post*.

(*j*) Surrender, assign, or otherwise dispose of with or without consideration any onerous property belonging to the lunatic;

((*j*) Surrender, etc., onerous property.)

This clause is based on sec. 127 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

(*k*) Enter into any agreement touching the patronage of augmented cures under the Act one George the First, chapter ten, which the lunatic might have entered into if he had been of sound mind;

((*k*) Enter into agreement under 1 Geo. I. c. 10.)

This clause re-enacts in substance sec. 128 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Any agreement, etc.—The reference is to agreements between "benefactors," or private contributors to the augmentation of benefices, and the Governors of Queen Anne's Bounty, whereby the former in consideration of their contributions acquired rights of patronage over the augmented cures. Under sec. 9 of 1 Geo. I. st. 2, c. 10, such an arrangement by the guardian of an idiot was as good and effectual as if the idiot had been of sound mind and had himself made it. Sec. 26 of 11 Geo. IV. and 1 Will. IV. extended this provision to agreements by committees of the estates of lunatics so found.

Meaning of agreements, etc.

Sec. 120.

((*l*) Exercise powers, etc.)

(*l*) Exercise any power or give any consent required for the exercise of any power where the power is vested in the lunatic for his own benefit or the power of consent is in the nature of a beneficial interest in the lunatic.

This clause re-enacts the substance of sec. 136 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Powers for lunatic's benefit.

Any power, i.e. any power vested in the lunatic for his own benefit. The exercise of powers vested in a lunatic in the character of trustee or guardian—words which include a power of appointing new trustees [1]—is provided for by sec. 128, *post*.

re Harwood.

In *re Harwood* [2]—a case decided under the corresponding provisions in sec. 136 of the Lunacy Regulation Act 1853—Cotton and Lindley, L.JJ., held that where a lunatic was mortgagee with a power of sale, the committee could not be authorised by one order both to sell and to convey the legal estate to the purchaser, but that the order must only direct him to sell, leaving the transfer of the legal estate to be dealt with by a subsequent application under the Trustee Act 1850. The *ratio decidendi* was that a power of sale in a mortgage was not a power within the meaning of sec. 136 of the Act of 1853. "What is called a power of sale in a mortgage," said Cotton, L.J., "is nothing but an authority to defeat the equity of redemption, and when the mortgagee sells he transfers the legal estate not by means of a power, but by virtue of his legal ownership." The Court, however, doubted whether the order could not have been made under sec. 116 of the Act of 1853—corresponding to sec. 116, subs. (2) of the present Act. It is submitted that such an order could and would [3] now be made under the latter subsection.

Where power of consent is beneficial interest.

Any consent, i.e. where the power of consent is in the nature of a beneficial interest in the lunatic. If the power of consent is of a fiduciary character, the exercise of it can be authorised under sec. 128.[4]

re Browne.

Sec. 120 is not exclusive. Thus it was held in *re Browne* [5] that under sec. 108, subs. (2), and sec. 116 of the Act of 1890, *ante*, sec. 27, subs. (4) of the Lunacy Act 1891, and rule 56 of the Rules in Lunacy 1892, *post*, the Master had jurisdiction to appoint a receiver of dividends alone without a vesting order under sec. 133,[6] although sec. 120 does not mention the appointment of a receiver either expressly or by implication.

[1] *Re Shortridge*, 1895, 1 Ch. 278.

[2] 1887, 35 Ch.D. 470.

[3] Cp. the language of Lord Halsbury, L.C., and Lindley, L.J., in *re Shortridge, ubi sup.*, at pp. 283-84.

[4] Cp. *re Nevill*, 1885, 31 Ch.D. 161, a case decided under the Lunacy Regulation Act 1853, sec. 137, where the Court authorised the committee to consent to the exercise of a power of advancement under a marriage settlement.

[5] 1895, 43 W.R. 175.

[6] But the Court held that, except in special cases, the proper course is to order the stocks to be transferred into Court, and then to let the receiver obtain the dividends from the Paymaster-General.

Sec. 121.

Property exchanged and renewed lease to be to same uses as before.

121. Any property taken in exchange and any renewed lease accepted on behalf of a lunatic under the powers of this Act shall be to the same uses and be subject to the same trusts, charges, incumbrances, dispositions, devises, and conditions as the property given in exchange or the surrendered lease was or would but for the exchange or surrender have been subject to.

This section is based as to renewed leases on sec. 115, and as to lands taken in exchange on sec. 124 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Any property.—Definition of, sec. 341, *post*, and see notes to sec. 120 (*a*), *ante*, and sec. 122, *post*.

Taken in exchange.—See sec. 120 (*b*), *ante*.

Renewed lease.—See sec. 120 (*f*) and (*g*), *ante*.

Shall be . . . subject to.—A similar rule was observed under the old practice, owing to the reluctance of the Court to change the lunatic's estate.[1]

Extent of leasing power.

122. (1) The power to authorise leases of a lunatic's property under this Act shall extend to property of which the lunatic is tenant in tail, and every lease granted pursuant to any order under this Act shall bind the issue of the lunatic and all persons entitled in remainder and reversion expectant upon the estate tail of the lunatic, including the Crown, and every person to whom from time to time the reversion expectant upon the lease belongs upon the death of the lunatic shall have the same rights and remedies against the lessee, his executors, administrators, and assigns, as the lunatic or his committee would have had.

Origin of subsection.

This subsection re-enacts sec. 1 of 18 & 19 Vict. c. 13, which was passed to remove doubts that had arisen whether sec. 129 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70) enabled the Court to empower the committee of a lunatic to grant leases binding on issue to remainder-man.

The power to authorise, etc.—See sec. 120, (*d*)-(*h*), *ante*.

Lease.—Definition of, sec. 341, *post*.

Property.—Definition of, sec. 341, *post*.

[1] Cp. *re Jermyn*, 1788, 3 Swanst. 131 n. (*a*); *re Portsmouth*, 1827, *re Birch*, 1827, Shelf. Lun. 452.

Sec. 122 (2), (3).

(2) Leases authorised to be granted and accepted by or on behalf of a lunatic under this Act may be for such number of lives or such term of years, at such rent and royalties, and subject to such reservations, covenants, and conditions as the Judge approves.

This subsection is based on secs. 130 and 131 of the Lunacy Regulation Act 1853 (16 and 17 Vict. c. 70).

Leases . . . Act.—See sec. 120 (*d*)-(*h*), *ante.*

The Judge.—See sec. 108, subs. (2), *ante.*

Master's certificate; settlement of leases.

The Master certifies his approval of agreements for leases, and if his certificate is confirmed, settles the leases themselves (cp. Rules in Lunacy 1892, r. 122, *post*).

(3) Fines or other payments on the renewal of leases may be paid out of the lunatic's estate, or charged with interest on the leasehold property.

This subsection is based on sec. 114 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

See notes to subss. (1) and (2), *sup.*

As to character of fines, etc., see sec. 123, subs. (2), *post.*

Lunatic's interest in property not to be altered.

123. (1) The lunatic, his heirs, executors, administrators, next of kin, devisees, legatees, and assigns, shall have the same interest in any moneys arising from any sale, mortgage, or other disposition, under the powers of this Act which may not have been applied under such powers, as he or they would have had in the property the subject of the sale, mortgage, or disposition, if no sale, mortgage, or disposition, had been made, and the surplus moneys shall be of the same nature as the property sold, mortgaged, or disposed of.

This subsection re-enacts, with a difference (see note to "property," *inf.*), sec. 119 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Lunatic.—Definition of, sec. 341, *post*, and see note to sec. 120 (*a*), *ante.*

Next of kin.—Definition of, sec. 341, *post.*

Sale.—See sec. 120 (*a*), *ante.*

Mortgage.—Definition of, sec. 341, *post.*

Sec. 123 (1).

Applied under such powers.—See secs. 117, 118, *ante.*

The property.—Sec. 119 of the Act of 1853, whether by inadvertence [1] or advisedly,[2] applied only to "land," which was defined in sec. 2 as comprehending real hereditaments, "and also property of every description transferable otherwise than in books kept by any company or society." It was held, therefore, not to apply to shares [3] or stock,[4] even if ear-marked by the direction of the Court. See, however, definition of "property," now in sec. 341, *post*, and note to sec. 120 (*a*), *ante.*

Property.

As he or they . . . disposed of.—The effect of this subsection may be stated thus:—Moneys arising from any sale, mortgage, or other disposition of property may be applied under the powers of the Act, see secs. 117 and 118. If they are unapplied, the interest of the lunatic's representatives in the property is not to be altered; and any unapplied balance is to be of the same nature as the property disposed of; and the Judge will under subs. (3), *inf.*, and sec. 124, *post*, make and give any orders and directions necessary for carrying these provisions into effect. Subs. (2), *inf.*, deals with the specific cases of money received for equality of partition and exchange, etc. It will be observed that under these subsections the rule that the Court will not alter the character of a lunatic's property, to the prejudice of his representatives, becomes, if, and in so far as, there is no application of the moneys in question under the powers of the Act, an imperative rule, and not as in the case of money changed into land (see sec. 118, *ante*) merely a discretionary one. The object of the provisions under consideration, however, is only to give the rule of transmission or descent. For other purposes the property must be taken to be of the quality which it actually bears; and accordingly the proceeds of real estate have been paid out of Court to the husbands of married women who were the real representatives with their consent as personalty, and without their executing a deed under the Fines and Recoveries Act.[5] On the other hand it is now settled, after some difference of judicial opinion,[6] that a fund in Court representing land taken under compulsory powers will not be paid out to a lunatic tenant in tail without a disentailing deed having been executed.[7] Realty once impressed with the character of personal estate must remain so impressed until some one elects to take it in its original character. There is no presumption of election in cases of lunacy.[8] The lunatic of course cannot elect. But the committee of a lunatic so found may elect in his stead,[9] under

Effect of subsection.

Rule imperative,

but applies only to purposes of transmission and descent.

Deed, when necessary.

No presumption of election.

[1] *Jones* v. *Green*, 1868, L.R. 5 Eq., per Giffard, V.-C., at p. 559.

[2] *Re Freer*, 1882, 22 Ch.D., per Chitty, J., at p. 627.

[3] *Jones* v. *Green*, *ubi sup.*, at p. 555.

[4] *Re Freer*, *ubi sup.*, at p. 622.

[5] *Re Trevylyan*, 1862, 31 L.J., N.S., Ch. 560; *re Wheeler*, 1862, 6 L.T., N.S., 846.

[6] In *re Row*, 1874, L.R. 17 Eq. 300, and *Wood's Settled Estates*, 1875, L.R. 20 Eq. 372, Malins, V.-C., took an opposite view. And cp. *re S. E. Ry. Co.*, 1861, 30 Beav. 215; and *Notley* v. *Palmer*, 1865, L.R. 1 Eq. 241.

[7] *Re Butler's Will*, 1873, L.R. 16 Eq. 479; *re Norcop*, 1874, 31 L.T., N.S., 85; *re Reynolds*, 1876, 3 Ch.D. 61.

[8] *Ashby* v. *Palmer*, 1816, 1 Mer. 296; and cp. *re Wharton*, 1854, 5 De G. M. & G. 33; *Dixie* v. *Wright*, 1863, 32 Beav. 662.

[9] *Re Hewson*, 1854, 23 L.J., N.S., Ch. 256.

Sec. 123 (1).

Election by committee or Court.

the direction of the Court,[1] and in the case of a person of unsound mind not so found by inquisition, the Court has jurisdiction to bind his equitable interests by electing for him if it appears to be for his benefit.[2]

Alteration of lunatic's estate.

The law with reference to the alteration of a lunatic's estate may be summarised as follows:—

1. Leaning of Courts against alteration. Origin and authority of principle.

1. It has from very early times been the settled practice of the Court, so far as may be possible, not to alter the character of the lunatic's property or to interfere with any rights of succession.[3] This principle was a necessary deduction from the fact that the Court in Lunacy is by the statute *de Praerogativâ Regis* not the proprietor, but only the guardian and administrator of a lunatic's estate, it has been affirmed by a long and practically uninterrupted series of decisions,[4] and it received an express statutory embodiment in sec. 119 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), on which the provisions under examination are based.

A.-G. v. *Marquis of Ailesbury.* Accumulations of personalty invested in realty. Liability of to probate duty.

In the *Attorney-General* v. *The Marquis of Ailesbury*[5] a question as to the liability of accumulations of a lunatic's personalty, invested in realty, to probate duty was raised and decided. Here money of a lunatic was invested by his committees by order of the Lords Justices in Lunacy in purchases of land. The Lords Justices' order directed that the money so invested should continue personal estate; and the lands were conveyed to the committees, "their heirs and assigns upon trust for" the lunatic, "his executors, administrators, and assigns," with certain powers of leasing and sale, and a declaration (which it will be observed was wider than the Lords Justices' order) that the land purchased should *to all intents and purposes* be considered as part of the personal estate of the lunatic, but contained no trust for sale. The question was whether the value of these investments was personal estate and liable to probate duty. On behalf of the executors of the lunatic several points were taken. First it was said that if the rule that the Lords Justices will not change the character of a lunatic's property ever existed, it had become obsolete. The Courts, however, before which the case successively came,

Rule against alteration of character of lunatic's estate not obsolete.

[1] Cp. *re Marriott*, 1808, 2 Moll. 516.

[2] Per Kay, J., *Wilder* v. *Pigott*, 1882, 22 Ch.D. 263. On this point, however, the language of Kay, J., was *obiter*, as he held that the lunatic had elected while sane.

[3] Compare the judgment of Lord Macnaghten in *A.-G.* v. *Marquis of Ailesbury*, 1887, 12 App. Cas. 688, where the case law on this subject is elaborately reviewed.

[4] *Awdley* v. *Awdley*, 1690, 2 Vern. 192; *ex parte Annandale*, 1749, 1 Ambl. 81; *ex parte Ludlow*, 1742, 2 Atk. 407; *Gibson* v. *Scudamore*, 1726, 1 Dick. 45; *Witter* v. *Witter*, 1730, 3 P.W. 99; *Bridges* v. *Bridges*, 1752, Seton Dec. 345; *ex parte Grimstone*, 1772, 4 Bro. C.C. 235 n.; *Oxenden* v. *Lord Compton*, 1793, 2 Ves. jun. 69, 72, 73; *Leitrim* v. *Enery*, 1844, 6 Ir. Eq. R. 357; *ex parte Whitbread*, 1816, 2 Mer. 102; *Ashburton* v. *Ashburton*, 1801, 6 Ves. 5; *Ware* v. *Polhill*, 1805, 11 Ves. 278; *ex parte Phillips*, 1812, 19 Ves. 118, 122; *ex parte Bromfield*, 1792, 1 Ves. jun. 462; *Flanagan* v. *Flanagan*, cit. at 1 Br. C.C. 500; *re Ryder*, 1882, 20 Ch.D. 514; *re Barker*, 1881, 17 Ch.D. 241; *Grimwood* v. *Bartels*, 1877, 46 L.J., N.S., Ch. 788; *re Pickard*, 1885, 53 L.T., N.S., 293; *A.-G.* v. *Marquis of Ailesbury*, 1885, 1887, 14 Q.B.D. 495, 16 Q.B.D. 408, 12 App. Cas. 672; *re Badcock*, 1840, 4 My. & Cr. 440.

[5] 1885-87, 14 Q.B.D. 495, 16 Q.B.D. 408, 12 App. Cas. 672.

Sec. 123 (1).

the Divisional Court, the Court of Appeal, and the House of Lords, were practically unanimous against the executors in regard to this contention. The case may therefore be taken as a clear authority for the rule. Next it was contended—a point which appears to have been taken only in the Divisional Court—that while under sec. 119 of the Lunacy Regulation Act 1853, when land was sold or charged the surplus money retained the nature of the estate, nothing was said of money invested in the purchase of land, and therefore the inference was against the existence in such a case of any power to treat the money as unconverted. The Judges (Mathew and Smith, JJ.) expressly dissented from this argument; it obviously fell to the ground in view of their decision that the rule in question existed. In the judgment of Lord Macnaghten in the House of Lords, sec. 119 of the Lunacy Regulation Act 1853 is properly treated as an illustration of the rule. Lastly, it was urged that to make what is in fact land liable to probate duty there must be a contract or an imperative direction or trust which would require the sale of the land; here no contract could be alleged. In considering whether there was an imperative direction or trust the conveyances only were to be looked to; the declaration in them, that the land was "for all intents and purposes" to be personalty was not sufficient, there was no express or implied trust for sale; and even if the Lords Justices' order was to be looked at, the mere direction that the personal estate when invested in land should remain personalty had not the effect of preventing conversion. These arguments were rejected by the Divisional Court, whose judgment was reversed by the Court of Appeal, but restored by the House of Lords. It is unnecessary to consider minutely the judgments of the Courts on this last line of argument; the clear assertion by the House of Lords of the principle that the Court in Lunacy will not, if it can be avoided, alter the character of a lunatic's estate, renders it of comparatively little importance.

Money invested in purchase of land converted.

Contract or imperative trust, whether necessary.

2. The existence of the general rule will not, however, prevent the Court, subject to the provisions of sec. 123, from changing the condition of a lunatic's property, without regard to rights of succession, when the change is for his benefit. Thus where the land tax on a lunatic's estate had been redeemed out of the produce of decaying timber ordered to be cut for payment of debts, on the Master's report that it was for his benefit, Lord Eldon refused to hold that the land tax being purchased out of personalty was personal estate, and to declare the land tax so redeemed a charge upon the estate for the benefit of the next of kin.[1] Moreover, the Court will not reconvert the estate of a lunatic, the quality of which has been changed by his committee in improper execution of an order of Court,[2] or without the direction of the Court[3] in the absence of

2. Alteration, when effected.

[1] 1812, *ex parte Phillips*, 19 Ves. 118; and cp. *Oxenden* v. *Lord Compton*, 1793, 2 Ves. jun. 69, where Lord Eldon held that there is no equity between the real and the personal representatives after the death of a lunatic to have property altered by the Court restored.

[2] *Flanagan* v. *Flanagan*, 1768, 2 Ves. jun. 77.

[3] *Flanagan* v. *Flanagan*, *ubi sup.*

Sec. 123 (1), (2).

breach of trust or abuse of confidence,[1] or by the tort of a stranger.[2]

3. Ademption.

3. As regards ademption, the law is as follows:—The surplus of specific property disposed of within sec. 123 retains its character for purposes of succession.[3] A specific bequest made by the lunatic while sane will, if possible, not be defeated,[4] especially where its character has been changed by some person having no lawful right to do so, *e.g.* by the testator's wife, executors, and residuary legatees without suing out a commission in lunacy,[5] or by a committee without the authority of the Court in Lunacy.[6] In other cases a change in the character of specific property belonging to a lunatic adeems a legacy of it.[7]

(Money received for equality of partition.)

(2) Moneys received for equality of partition and exchange, or under any lease of unopened mines, and all fines, premiums, and sums of money received upon the grant or renewal of a lease, where the property the subject of the partition, exchange, or lease was real estate of the lunatic, shall, subject to the application thereof for any purposes authorised by this Act, as between the representatives of the real and personal estate of the lunatic, be considered as real estate, except in the case of fines, premiums, and sums of money received upon the grant or renewal of leases of property of which the lunatic was tenant for life, in which case the fines, premiums, and sums of money shall be personal estate of the lunatic.

Origin of subsection.

This subsection is based, as regards the application of moneys received for equality of partition or exchange, on sec. 124; as regards unopened mines, on sec. 132; as regards fines, etc., on the grant of leases, on sec. 133; and as regards fines, etc., on the renewal of leases, on sec. 135 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

[1] *Ex parte Ludlow*, 1743, 2 Atk. 407.

[2] *Anon.*, cit. 1 Ves. jun. 462—a case where timber had been tortiously cut down by a stranger, and the Court held that there was no equity to restore it to the real estate.

[3] Cp. *Freeman* v. *Ellis*, 1863, 1 H. & M. 758; and *Midland Counties Railway Co.* v. *Oswin*, 1844, 1 Coll. 80.

[4] *Ex parte Haycock*, 1828, 5 Russ. 154. Here the Court refused to direct a sale of the subject of such a bequest, although the Master had reported in favour of it.

[5] *Taylor* v. *Taylor*, 1853, 10 Ha. 475; and cp. *Jenkins* v. *Jones*, 1866, L.R. 2 Eq. 323.

[6] *Re Larking*, 1887, 37 Ch.D. 310.

[7] *Browne* v. *Groombridge*, 1819, 4 Madd. 495; not followed, but on another point, as to a direction for the exoneration of personal estate enuring for the benefit of legatees whose bequests had lapsed, in *Kilford* v. *Blaney*, 1885, 31 Ch.D. 57.

Sec. 123 (2), (3).

See generally notes to preceding subsection.

Received.—No provision is made as to moneys *paid* for equality of partition or exchange. Such a case could, however, be dealt with under sec. 118, *ante*, by making the money a charge on the property.

Partition or exchange.—See sec. 120 (*b*), *ante*.

Unopened mines.—As to leases of mines already opened, see sec. 120 (*e*), *ante*.

Lease.—Definition of, sec. 341, *post*.

Property.—Definition of, sec. 341, *post*; and sec. 120 (*a*), *ante*.

The application . . . Act.—See secs. 117 and 120, *ante*.

Lunatic.—Definition of, sec. 341; and see *ante* p. 414.

(3) In order to give effect to this section the Judge may direct any money to be carried to a separate account, and may order such assurances and things to be executed and done as he thinks expedient.

"Separate account."

Separate account.—The object of this provision is to call the attention of the Court to the artificial character of the property, and not to alter the rights of parties. Consequently, where by an order made in a partition suit, a share of real estate belonging to a lunatic was sold, and the proceeds paid into Court to the credit of the lunacy, but not carried to a real estate account, it was held that the omission was immaterial, and that on the death of the lunatic intestate the money passed to his heir-at-law.[1]

Power to carry orders into effect.

124. The committee of the estate, or such person as the Judge approves, shall in the name and on behalf of the lunatic execute and do all such assurances and things for giving effect to any order under this Act as the Judge directs, and every such assurance and thing shall be valid and effectual, and shall take effect accordingly, subject only to any prior charge to which the property affected thereby at the date of the order is subject.

This section is based on secs. 118, 119, 122-27, and 139 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 170).

The committee of the estate.—See *ante* pp. 347 *et seq.*, as to position, etc., of.

Or such person.—This clause provides for the case of persons not so found by inquisition. See sec. 116, subs. (1), (*b*) to (*e*) inclusive, and subss. (2) and (3), *ante*.

In the name.—See note to sec. 120 (*d*), *ante*.

Lunatic.—Definition of, sec. 341, *post*, and sec. 116, subs. (1), *ante*.

[1] *Re Barker*, 1881, 17 Ch.D. 241.

Sec. 124.

Winding up of partnership.

Covenants by committee.

Things.—Under this section a committee or other approved person may by direction of the Judge join and concur in the winding up of a partnership dissolved by order of the Court (see sec. 119, *ante*). Under this section the Court has also jurisdiction to authorise a committee who is selling the lunatic's property under an order in that behalf not only to convey the same on his behalf, but also on his behalf to enter into with the purchaser, the covenants usual and proper in such a conveyance, including the ordinary covenants for title.[1] It cannot, however, authorise him to enter into any covenant to pay the debts of other persons, even though it might be in the interest of the lunatic so to do.[2]

Admittance to copyholds.

125. Where a lunatic so found by inquisition is entitled to be admitted tenant of copyhold land, the committee of his estate may appear at one of the three next courts holden for the manor (for the holding whereof the usual notice shall be given), and there offer himself to be admitted tenant in the name and on behalf of the lunatic; and in default of his appearance, or of his acceptance of admittance, the lord or his steward may, after three courts duly holden, and proclamations thereat regularly made, at any subsequent court appoint any fit person to be attorney for the lunatic for that purpose only, and by that attorney admit the lunatic tenant of the land, according to such estate as the lunatic is legally entitled to therein.

This section re-enacts sec. 108 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), which was based on secs. 3-5, 6, 8, and 9 of 11 Geo. IV. and 1 Will. IV. c. 65.

A lunatic so found by inquisition.—The limitation of the provisions of this section, and by implication of sec. 126, *post*, to lunatics so found should be noted. Query, however, whether under sec. 45 of the Copyhold Act 1894 a lunatic tenant (the term lunatic is not defined in the Act, but would probably be interpreted as an idiot or person of unsound mind) would not now be admitted, although not so found, by some fit person appointed by the Board of Agriculture, as prescribed by the section. As to vesting orders under the Lunacy Act, see sec. 135, subss. (5) and (6), *post*.

Query as to Copyhold Act 1894, sec. 45.

Position of tenant of copyhold lands.

Tenant.—The position of the lunatic tenant of copyhold land has all along been a peculiar one. He was formerly held incapable of committing a forfeiture;[3] he did not come within the statute *de*

[1] *Re Ray*, 1896, 1 Ch. 468.
[2] *Re Fox*, 1886, 33 Ch.D. 37.
[3] Co. Copy. sec. 59, Tr. 136, 1 Watk. (337).

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Praerogativâ Regis,[1] and therefore the King had not the custody of his lands.[2] It was a moot point whether the lord of the manor himself had them in the absence of special custom;[3] and the committee was held to have no interest in the land, but only a bare custody or authority.[4]

Lunacy of lord of manor.

The committee . . . therein.—The section does not deal, it will be observed, with the lunacy of the lord of a manor. But by secs. 45, 83, and 84 of the Copyhold Act 1894 the committee of the estate of a lunatic so found—and in the case of a lunatic not so found a fit person appointed by the Board of Agriculture—could now grant copyholds for a lunatic lord of the manor.[5]

Enfranchisement of copyholds.

This section applies also to the enfranchisement, etc., of copyholds—the machinery for which is now contained in the Copyhold Act 1894.

The Court on sanctioning proceedings for the enfranchisement of a copyhold estate belonging to a lunatic, as to which the rules are different from those as to the descent of freeholds, will make a declaration in accordance with the settled principle against altering the rights of succession to a lunatic's property, which will on the death of the lunatic intestate carry the equitable interest in the enfranchised copyhold to the persons who would have taken it if it had not been enfranchised.[6]

An interesting question may arise as to the application of the Statute of Limitations so far as it will avail to convert copyholds into freeholds. The Statutes of Limitations apply to a seizure *quousque* of copyholds by the lord of the manor, and the period fixed by those statutes begins to run from the time at which after proclamation and notice the heir has come in. But query whether the committee of a lunatic lord of the manor would stand in his place for this purpose.[7]

Fines upon admittance.

126. (1) The lord or his steward may upon the admittance impose such fine as might have been imposed if the lunatic had been of sound mind, which fine may be

[1] 4 Rep. 126; Co. Copy. sec. 55.

[2] *Beverley's case*, 4 Rep. 126 (*b*); Dyer, 302 (*a*).

[3] *Cocks* v. *Darson*, Hob. 215 (*a*). But see *Eavers* v. *Skinner*, 3 Jac. I., Cro. Jac. 105, where it was held that the lord should have the custody of a *mutus et surdus* because—an observation which by parity of reasoning applied also to lunatics—otherwise he would be prejudiced in his rents and services.

[4] Cp. *Griggs* v. *Gibson*, 1866, 14 W.R. 819.

[5] Under the old law the grants were required to be made by the steward (apparently with the acquiescence of the committee and the sanction of the Court—*Blewit's case*, 9 Jac. I., Ley. 47), and not by the committee (*ib.*; Vin. Abr. Copy. (*g*), pl. 15; 1 Watk. Copy. 24; Scriv. Copy. 7th ed., 79). But the mental disability of the lord did not invalidate a grant once made, inasmuch as the tenant derived his estate not only out of the estate of the lord, but out of the custom of the manor (Co. Copy. sec. 34). It is thought that this rule would still hold good.

[6] *Re Ryder*, 1882, 20 Ch.D. 514.

[7] Cp. *Ecclesiastical Commissioners* v. *Parr*, 1894, 2 Q.B. 420; *Beighton* v. *Beighton*, 1895, 46 L.J., N.S., Ch. 796.

Sec. 126 (1)-(4).

demanded by the lord's bailiff or agent, by a note in writing signed by the lord or his steward, to be left with the committee of the estate, or with the tenant or occupier of the land.

This subsection re-enacts sec. 109 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

See notes to sec. 125.

(2) If the fine is not paid or tendered to the lord or his steward within three months after demand, then the lord may enter upon and hold the land, and receive the rents and profits thereof (but without liberty to fell any timber standing thereon), until he is thereby fully paid the fine, with his reasonable costs and charges of raising the same, and of obtaining the possession of the land, although the lunatic die before the fine and costs and charges have been raised.

This subsection re-enacts the first clause of sec. 110 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

(3) The lord shall yearly, on demand by the person entitled to the surplus rents and profits, after payment of the fine and costs and charges, or by the person then entitled to the land, render an account of the rents and profits received by him or on his behalf, and shall pay the surplus, if any, to the person entitled thereto.

This subsection re-enacts the second clause of sec. 110 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

(4) As soon as the fine and costs and charges have been fully paid, or if after the lord's entry, the fine and costs and charges are lawfully tendered to him, then the lunatic, by the committee of his estate or other the person entitled, may enter upon and hold the land, according to his estate or interest therein; and the lord shall deliver possession thereof accordingly, and if he refuse so to do he

shall make satisfaction to the person kept out of possession for all the damages which he thereby sustains, and all his costs and charges of recovering possession. Sec. 126 (4)-(6).

This subsection re-enacts the last clause of sec. 110 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

(5) If the committee pays the fine and costs and charges, then he, his executors and administrators, may enter upon and hold the land, and receive the rents and profits thereof until payment thereout of the amount disbursed upon that account, although the lunatic die before reimbursement.

This subsection re-enacts sec. 111 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

(6) If the fine imposed is not warranted by the custom of the manor, or is unlawful, the lunatic may controvert its legality, as if this Act had not been passed; and no lunatic so found by inquisition shall forfeit any land for his neglect or refusal to appear at any court, or to be admitted thereto, or to pay the fine imposed upon his admittance.

This subsection re-enacts sec. 112 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

127. (1) Where it appears to the Judge that there is reason to believe that the unsoundness of mind of any lunatic so found by inquisition is in its nature temporary, and will probably be soon removed, and that it is expedient that temporary provision should be made for the maintenance of the lunatic, or of the lunatic and the members of his immediate family who are dependent upon him for maintenance, and that any sum of money arising from or being in the nature of income or of ready money belonging to the lunatic, and standing to his account with a banker or agent, or being in the hands of any person for his use, Where lunacy temporary money may be applied for temporary maintenance.

Sec. 127 (1)-(3).

is readily available and may be safely and properly applied in that behalf, the Judge may allow thereout such amount as he thinks proper for the temporary maintenance of the lunatic, or of the lunatic and the members of his immediate family who are dependent upon him for maintenance, and may, instead of proceeding to order a grant of the custody of the estate, order or give liberty for the payment of any such sum of money as aforesaid, or any part thereof, to such person as, under the circumstances of the case, he thinks proper to entrust with the application thereof, and may direct the same to be paid to such person accordingly, and when received to be applied, and the same shall accordingly be applied, in or towards such temporary maintenance as aforesaid.

This subsection re-enacts the first clause of sec. 121 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

The Judge.—See sec. 108, subs. (1), *ante.*

Temporary . . . maintenance.—As to provision for maintenance, see *ante* p. 369. This subsection deals with maintenance in cases of presumably temporary insanity. As to temporary maintenance pending appointment of committees, see sec. 130, *post.*

(2) The receipt in writing of the person to whom payment is to be made for any moneys payable to him by virtue of an order under this section shall be a good discharge, and every person is hereby directed to act upon and obey every such order.

This subsection re-enacts the second clause of sec. 121 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Every person.—As to protection of persons putting the Act in force, see sec. 330, *post.*

(3) The person receiving any money by virtue of an order under this section shall pass an account thereof before the Masters, when required.

This subsection re-enacts the third clause of sec. 121 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Masters.—Definition of, sec. 341, *post.*

As to powers and duties of, see *ante* pp. 386 *et seq.*

Sec. 128.

Committee may exercise power vested in lunatic in character of trustee or guardian.

128. Where a power is vested in a lunatic in the character of trustee or guardian, or the consent of a lunatic to the exercise of a power is necessary in the like character, or as a check upon the undue exercise of the power, and it appears to the Judge to be expedient that the power should be exercised or the consent given, the committee of the estate, in the name and on behalf of the lunatic, under an order of the Judge, made upon the application of any person interested, may exercise the power or give the consent in such manner as the order directs.

This section re-enacts sec. 137 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

A power . . . like character.—As to the execution of powers of leasing, see sec. 120 (*h*), *ante*. As to the execution of powers, and the grant of consents, of a beneficial character, see sec. 120 (*l*), *ante*.

Section deals with fiduciary powers.

This section deals with powers of a fiduciary character,[1] and therefore, where a lunatic is donee of a power of appointing new trustees of a settlement, the Court has jurisdiction under this section and sec. 129, *post*, to exercise the power on his behalf, by appointing persons named in the order to be new trustees of the settlement.[2] Where the settlement comprises bank annuities, the order of the Judge may properly go on to authorise the persons so named, upon their appointment as trustees, to call for a transfer of the bank annuities into their own names, to receive the dividends until transfer, and to hold the stock when transferred upon the trusts of the settlement.[2] A certificate of the Master is appended to the deed to show that it is the one on which the bank has to act.[3] See further as to the appointment of new trustees under powers, sec. 129, *post*.

Power of appointing new trustees.

Order may authorise new trustees to call for transfer.

Power of advancement.

Under the corresponding section in the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70, sec. 137) it was held that the Court had jurisdiction to authorise a committee to consent on behalf of a lunatic to the exercise of a power of advancement in a marriage settlement.[4]

Procedure.

In the case of a power exerciseable by consent of a lunatic, the proper course is to apply for an order authorising the committee to consent on the lunatic's behalf.[5]

Consent of married woman to investments dispensed with.

The consent of a married woman, of unsound mind but not so found by inquisition, which was by the terms of a

[1] Cp. *re Skeats' Settlement*, 1889, 42 Ch.D. 522.

[2] *Re Shortridge*, 1895, 1 Ch. 278.

[3] Cp. *ib.*, at pp. 283, 285, 286. *Semble*, the Bank taking the opinion of Court as to a transfer order are not hostile litigants but *amici curiae*, and the Court will decline to make an order for costs against them (*ib.*, at p. 286).

[4] *Re Nevill*, 1885, 31 Ch.D. 161. Cp. *re Blake*, W.N. 1887, 173, and *ex parte Reibey*, 1843, 7 Jur. 589. A joint power is within this section (*Jonathan Wilde*, 11th June 1855; and *re Lord Kilworth*, 1876, I.R. 11 Eq. 612; *re Lemann's Trusts*, 1883, 22 Ch.D. 633).

[5] *Re Garrod*, 1885, 31 Ch.D. 164.

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marriage settlement required to be given in writing to any investments by the trustees, has been dispensed with.[1]

"Nominee" of lunatic subscriber. *Urquhart* v. *Butterfield.*

It was held by North, J., in *Urquhart* v. *Butterfield*,[2] that the Court in Lunacy has no jurisdiction to appoint a "nominee" on behalf of a lunatic subscriber to the Customs Annuity and Benevolent Fund created by 56 Geo. III. c. 73. The point was raised in that case by an order of the Court of Session nominating the *curator bonis* of a lunatic subscriber to the Fund. The nomination was, however, admitted by counsel in the argument before North, J., to be as valid as if it had been made by the subscriber himself; and as the Court of Appeal held[3] that this admission precluded any inquiry into the jurisdiction of the Scotch Court, the learned Judge's ruling on the question can only be regarded as *obiter*. The Court of Appeal expressed no opinion on the matter. It is conceived that such a nomination could now be made under sec. 120 (*l*), *ante*, by the committee of the estate by the authority of the Court. It is not necessary under the Act of Geo. III. (56 Geo. III. c. 73) and the rules made under it that a "nominee" should be a person who takes beneficially.

Payments by or to attorneys under powers.

As to payments by (query, or to) attorneys under powers without notice of the lunacy of the donor, see sec. 47 of the Conveyancing Act 1881 (44 & 45 Vict. c. 41).

Lunatic protector of settlement.

Where a lunatic, whether so found or not, would be but for his incapacity protector of a settlement under the Abolition of Fines and Recoveries Act 1833 (3 & 4 Will. IV. c. 74), the Judge in Lunacy is the protector of the settlement (3 & 4 Will. IV. c. 74, sec. 33), and has power to consent to any disposition under the Act by a tenant in tail of which he may approve (*ib.* sec. 48). If there is a joint protector of the settlement, his consent also must be obtained (sec. 48). Except in that case, however, no further evidence of consent is necessary than the Judge's order (sec. 49; and cp. 4 & 5 Will. IV. c. 92, sec. 49, as to tenant in tail becoming bankrupt), which is to be obtained on summary application (sec. 48; *semble*, by summons, Rules in Lunacy, 1892, r. 20, *post*).

Lunatic tenant in tail in possession. Principle guiding Court.

The powers of the Judge in Lunacy under the Abolition of Fines and Recoveries Act 1833 (3 & 4 Will. IV. c. 74) extends to cases where the lunatic tenant in tail is in possession.[4] The principle that guides the Court in the exercise of its consenting power was thus defined by Lord Cottenham, L.C., in *re Newman*:[5] "As protector of the settlement, the only duty of the Court is to see what, with reference to the interests of the family, it would be proper for the tenant for life to do." In the application of this principle the Court will look to the objects of the settlement,[5] the effect of the contemplated disposition upon them,[6] and the proximity of the relation of the petitioner to the lunatic.[7]

[1] *Re T.*, 1880, 15 Ch.D. 78.
[2] 1887, 36 Ch.D. 55.
[3] 1887, 37 Ch.D. 358.
[4] *Re Blewitt*, 1856, 6 De G. M. & G. 187, overruling *re Blewitt*, 1834, 3 My. & K. 250, and *re Wood*, 1838, 3 My. & Cr. 266.
[5] 1836-37, 2 My. & Cr. 112.
[6] Cp. *Grant* v. *Yea*, 1834, 3 My. & K. 245; *re Wood*, *ubi sup.*
[7] *Re Blewitt*, 1834, 3 My. & K. 250; *re Tharp*, 1876, 3 Ch.D. 59; *re Beridge*, 1884, 50 L.T., N.S., 653; *re Graydon*,

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The committee of the estate.—Apart from statute, or (*semble*) an enabling provision in the instrument creating the power, the committee of the estate could not exercise powers, whether naked or coupled with an interest vested in the lunatic, with or without the sanction of the Court.[1]

Lunatic cannot himself execute power.

In the name and on behalf of the lunatic.—A lunatic cannot himself execute a power, even if the donor expressly authorise him to execute it, notwithstanding supervening mental incapacity, in the instrument creating the power.[2]

Order.—See form of order in Appendix, *post.*

Appointment of new trustees under power to have effect of appointments by High Court, and like orders may be made as under Trustee Act 1850.

129. Where under this Act the committee of the estate, under order of the Judge, exercises, in the name and on behalf of the lunatic, a power of appointing new trustees vested in the lunatic, the person or persons who shall, after and in consequence of the exercise of the power, be the trustee or trustees, shall have all the same rights and powers as he or they would have had if the order had been made by the High Court; and the Judge may in any such case, where it seems to him to be for the lunatic's benefit and also expedient, make any order respecting the property subject to the trust which might have been made in the same case under the Trustee Act 1850, or any Act amending the same, on the appointment thereunder of a new trustee or new trustees.

This section re-enacts sec. 138 of the Lunacy Regulation Act 1853 (16 and 17 Vict. c. 70).

A power . . . lunatic.—See notes to sec. 128, *ante.*

The person . . . or new trustees.—As to the rights and powers of trustees, see now Parts I. and II. of the Trustee Act 1893 (56 and 57 Vict. c. 53); as to the powers of the Court, see Part III. of the same statute. The Trustee Acts 1850 and 1852 are repealed by the Act of 1893, except in so far as they relate to the Court exercising jurisdiction in lunacy in Ireland. This section does not oust the jurisdiction of the High Court under the Trustee Act 1893.[3] But no order will be made under that section in the case of a lunatic so found by inquisition, unless a committee has been appointed and duly served.[4]

1850, 1 Mac. & G. 655; *re Sparrow*, 1882, 20 Ch.D. 320.

[1] *Mansell* v. *Mansell*, 1757, Wilm. Notes, 51, 52; *ex parte Bradford*, 1737, West. Chan. Rep. 133; *ex parte Smyth*, 1818, 2 Swanst. 393; *re Bowmer*, 1859, 3 De G. & J. 659.

[2] Cp. Chance on Powers, secs. 595 *et seq.*, and cases as to coverture.

[3] Cp. *re Sparrow's Trusts*, 1870, 18 W.R. 1185; and *re Cutler*, 1895, 99 L.T. (Jo.) 62.

[4] *Re Parke's Trusts*, 1863, 8 L.T., N.S., 378; *re Parker's Trusts*, 1863, 32 Beav. 580.

Sec. 130.

Temporary provision for maintenance of lunatic. (Act of 1889, s. 51.)

130. In any case where, pending the appointment of committees, it appears to the Masters desirable that temporary provision should be made for the expenses of the maintenance or other necessary purposes or requirements of the lunatic, or any member of his family, out of any cash or available securities belonging to him in the hands of his bankers, or of any other person, the Master shall be at liberty by certificate to authorise such banker or other person to pay to the person to be named in such certificate such sum as they certify to be proper; and may by such certificate give any directions as to the proper application thereof for the lunatic's benefit by that person, who shall be accountable for the same as the Masters direct.

This section re-enacts sec. 51 of the Lunacy Act 1889.

Pending the appointment of committees.—As to appointment of committees, see *ante* pp. 345 and 347.

Masters.—As to powers and duties of, see *ante* pp. 386 *et seq.*

Definition of, see sec. 341, *post.*

Temporary provision.—As to provision in cases of temporary lunacy, see sec. 127, *ante.*

Powers as to Property in England, Scotland, and Ireland.

Power to deal with property in England, Scotland, and Ireland. (Act of 1889, s. 53, subs. (1).)

131. (1) The powers of management and administration of the estates of lunatics conferred by this Act shall, without an inquisition or other proceedings in Ireland, extend to the personal property in Ireland of a lunatic so found by inquisition in England where such personal property does not exceed two thousand pounds in value or the income thereof does not exceed one hundred pounds a year; and the like powers conferred by the Lunacy Regulation (Ireland) Act 1871 shall, without an inquisition or other proceedings in England, extend to the personal property in England of a lunatic so found

by inquisition in Ireland where such personal property or the income thereof does not exceed such amount as aforesaid. Sec. 131 (1), (2).

This subsection re-enacts sec. 53, subs. (1) of the Lunacy Act 1889.

The powers of management and administration.—These are contained in secs. 116-130 inclusive, *ante.*

Lunatics.—As to definition of for the purposes of secs. 116-130, see sec. 116, subs. (1), *ante.*

An inquisition . . . in Ireland.—As to inquisitions in Ireland, see the Lunacy Regulation (Ireland) Act 1871 (34 Vict. c. 22), and *ante* p. 84.

Personal property in Ireland.—As to the power of the Master to make inquiries as to property of the lunatic out of the jurisdiction, see Rules in Lunacy, 1892, r. 35.

Lunatic so found.—The care of persons of unsound mind is dealt with by subs. (4), *post.*

Where . . . a year.—In other cases, a transcript of the record has to be transmitted under sec. 107, *ante.*

The like powers.—See secs. 60-96 inclusive of the Lunacy Regulation Act 1871 (34 Vict. c. 22).

An inquisition in England.—As to inquisitions in England, see *ante* p. 259.

(2) Where a person has been found lunatic by inquisition in England or Ireland, and has personal property in Scotland, the committee of the estate of the lunatic shall, without cognition or other proceedings in Scotland, have all the same powers as to such property, or the income thereof, as might be exercised by a tutor at law after cognition, or a duly appointed *curator bonis* to a person of unsound mind in Scotland. (Act of 1889, s. 53, subs. (2).)

This subsection re-enacts the first part of sec. 53, subs. (2) of the Lunacy Act 1889.

See notes to preceding subsection.

Personal property in Scotland.—It will be observed that there is in the case of Scotland no limit in amount.

Cognition or other proceedings.—As to these, see Lorimer's Notes to Lindley on Partnership, 5th ed., pp. 808, 809, and Mackay's Manual of Practice, pp. 129 and 500.

Tutor at law.—As to tutors at law, see Bell's Principles, 9th ed., pp. 2103 *et seq.*

Curator bonis.—As to *curator bonis*, see *ib.*

Sec. 131 (3), (4).

(Act of 1889, s. 53, subs. (2).)

(3) Where a tutor at law after cognition or a *curator bonis* has been appointed to a lunatic in Scotland, who has personal property in England or Ireland, the tutor at law or *curator bonis* shall, without an inquisition or other proceedings in England or Ireland, have all the same powers as to such property, or the income thereof, as might be exercised by the committee of the estate of a lunatic so found by inquisition in England or Ireland.

This subsection re-enacts the second part of sec. 53, subs. (2) of the Lunacy Act 1889.

See notes to preceding subsections.

(Act of 1889, s. 53, subs. (3).)

(4) The powers of management and administration conferred by this Act in cases where the property of a person of unsound mind does not exceed two thousand pounds in value, or the income thereof does not exceed one hundred pounds per annum, and the powers conferred by section sixty-eight of the Lunacy Regulation (Ireland) Act 1871 shall extend to the property in Ireland or England, as the case may be, of the lunatic where the total value of the property in England and Ireland does not exceed two thousand pounds in value, or the income thereof does not exceed one hundred pounds a year.

34 & 35 Vict. c. 22, s. 68.

This subsection re-enacts sec. 53, subs. (3) of the Lunacy Act 1889.

See notes to subs. (1), *ante*.

Of unsound mind.—As to lunatics so found, see subs. (1), *ante*. Sec. 68 of the Act of 1871 is substantially identical with this.

Power of County Court Judge.

Power to deal with property of small amount. (Act of 1889, s. 54, subs. (1).)

132. (1) Where a reception order is made in the case of a lunatic the value of whose real and personal property is under two hundred pounds, and no relative or friend of the lunatic is willing to undertake the management of such property, any judge of county courts having jurisdiction in the place from which the lunatic is sent, may,

upon the application of the clerk of the guardians, or a relieving officer of the union from which the lunatic is sent, authorise the clerk or relieving officer, or such other person as the judge by his order appoints, to take possession of and sell and realise the real and personal property of the lunatic, and to exercise all the powers which could be exercised by the legal personal representative of the lunatic if he were dead; and the receipt of the person so authorised shall be a valid discharge to any person who pays any money or delivers any property of the lunatic to such person. Sec. 132 (1), (2)

This subsection re-enacts sec. 54, subs. (1) of the Lunacy Act 1889.

Reception order.—As to reception order, see *ante* pp. 86 *et seq.*, and definition of in sec. 341 *post.*

Lunatic.—Definition of, sec. 341, *post.*

Property.—Definition of, sec. 341, *post.*

Relative.—Definition of, sec. 341, *post.*

Willing to undertake.—See sec. 72, subss. (1) and (3), *ante.*

Guardian.—Definition of, sec. 341, *post.*

Union.—Definition of, sec. 341, *post.*

Order.—As to the power of the county court judge to make orders, on applications by guardians, for payment of expenses incurred by them under the Act, see sec. 300, *post.*

The real and personal property.—These words do not include stock standing in the name of a lunatic, and a county court judge has no jurisdiction to make an order for the transfer of such stock. The transfer of stock is specifically dealt with by sec. 133, under which a county court judge has no jurisdiction.[1] Stock. Jurisdiction of county court judge.

(2) The judge, by whom such order is made, may by the same or any subsequent orders give such directions as he thinks fit as to the application of the property of the lunatic for his benefit or in reimbursement of such sums as may have been or may be expended by the guardians of the union for his care or relief, or of the costs or expenses incurred in relation to the lunatic by such guardians, or by the person acting under any such order as aforesaid, or the (Act of 1889, s. 54, subs. (2).)

[1] *Re Noyce*, 1891-92 (1892), 1 Q.B. 97 and 642; and cp. *re Shortridge*, 1895, 1 Ch., at p. 286.

Sec. 132 (2), (3).

judge may, if he thinks fit, order that the whole or any part of the proceeds of the lunatic's property be paid into the county court to the credit of an account intituled in the matter of such lunatic, and any sum so paid into court may either be invested in the manner provided by the county court rules in force for the time being, or be paid out of court from time to time to such person as the judge directs, to be held and applied for the benefit of such lunatic, or in or towards such reimbursement as aforesaid, in such manner as the judge directs.

This subsection re-enacts sec. 54, subs. (2) of the Lunacy Act 1889. See notes to subs. (1), *sup.*

Procedure in county courts.

Or the judge may . . . directs.—Under Order 37 of the County Court Rules 1889, funds paid into court are at present, in the absence of any special order by the judge, invested in a Post Office Savings Bank. As to investment of moneys awarded to persons of unsound mind (not so found) in actions or matters in the county court, see Order 9, rr. 21 and 22 of the County Court Rules 1889.

(Act of 1889, s. 54, subs. (3).)

(3) The person acting under any such order shall render an account of his dealings with the lunatic's property to the judge by whom such order was made in such manner as the judge appoints.

This subsection re-enacts sec. 54, subs. (3) of the Lunacy Act 1889.

Vesting Orders.[1]

Power to transfer stock of lunatic.

133. Where any stock is standing in the name of or is vested in a lunatic beneficially entitled thereto, or is standing in the name of or vested in a committee of the estate of a lunatic so found by inquisition, in trust for the lunatic, or as part of his property, and the committee dies intestate, or himself becomes lunatic, or is out of the jurisdiction of the High Court, or it is uncertain whether the committee is living or dead, or he neglects or refuses to transfer the stock, and to receive and pay over the divi-

[1] See Rules in Lunacy 1892, rr. 57-59, *post*, as to practice.

dends thereof as the Judge in Lunacy directs, then the Judge may order some fit person to transfer the stock to or into the name of a new committee or into Court or otherwise, and also to receive and pay over the dividends thereof in such manner as the Judge directs. Sec. 133.

This section re-enacts sec. 140 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

"Stock." *Stock.*—See sec. 341, *post*, where "stock" is defined as including "any fund . . . transferable . . . by instrument of transfer, *accompanied by other formalities.*" The words in italics include within the definition stock which can only be transferred by deed. Under the interpretation clause in the Lunacy Regulation Act 1853 (sec. 2) it was held that the corresponding words "any fund . . . transferable in books kept by any company," included stock of this character.[1]

"Vested in a lunatic." *Vested in a lunatic.*—It is conceived that in this part of the section the word "vested" is used in the sense of enjoyment rather than obtaining a right; coming into possession rather than accruing in point of interest.[2] See note, *inf.*, to "vested in a committee." See definition of lunatic, for purposes of this section, sec. 116, subs. (1), *ante*.

Beneficially entitled, i.e. entitled for his own benefit and not simply as a trustee for others.[3]

"Vested in a committee." *Vested in a committee.*—The word "vested" here includes the right to obtain and deal with, without being actual owner of, the lunatic's personal estate.[4] See note to "vested in a lunatic," *sup.*, and to sec. 134, *post*.

Is out of the jurisdiction of the High Court.—As to transfer of stock in the name of a lunatic out of the jurisdiction, see sec. 134, *inf.*

Dividends.—Definition of, sec. 341, *post*.

Jurisdiction of county court judge. *The Judge.*—A county court judge has no jurisdiction, under the Lunacy Act 1890, to make a vesting order with regard to stock standing in the name of a lunatic, even if the value of the property affected by it is under £200.[5] The Masters in Lunacy have jurisdiction to make vesting orders.[6]

Order.—As to acting upon such orders, see sec. 145, *post*. As to costs, see sec. 109, *ante*. As to person to be named in order, see sec. 137, *post*. As to validity of transfers, see sec. 146, *post*.

Stock in name of lunatic out of the jurisdiction. **134.** Where any stock is standing in the name of or vested in a person residing out of the jurisdiction of the High Court, the Judge in Lunacy, upon proof to his satis-

[1] *Re Ives*, 1863, 3 De G. J. & S. 453; *re Mitchell*, 1881, 17 Ch.D. 515.

[2] Cp. *Richardson* v. *Robertson*, 1862, 6 L.T., N.S., 75.

[3] Cp. *re Jones*, 1884, 26 Ch.D., per Cotton, L.J., at p. 743.

[4] *Re Brown*, 1895, 2 Ch. 666.

[5] *Re Noyce*, 1891-92 (1892), 1 Q.B. 97 and 642; and cp. *re Shortridge*, 1895, 1 Ch., at p. 286.

[6] *Re Browne*, 1894, 3 Ch. 412-17.

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faction that the person has been declared lunatic, and that his personal estate has been vested in a person appointed for the management thereof, according to the law of the place where he is residing, may order some fit person to make such transfer of the stock or any part thereof to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends thereof, as the Judge thinks fit.

This section re-enacts sec. 141 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Stock.—See definition of in sec. 341, *post*, and note to corresponding word in sec. 133, *sup.*

Vested.—See note to corresponding word in sec. 133, *sup.*

Out of the jurisdiction.—As to power to transfer stock of lunatic so found where the committee is out of the jurisdiction, see sec. 133, *sup.*

The Judge in Lunacy.—See sec. 108, subs. (1), *ante.*

"Declared lunatic."

Declared lunatic . . . residing.—There must, to enable the Court to act under this section, be such a judicial declaration of lunacy as to effect a change in the legal status of the lunatic, and to *vest* (in the sense explained below) his personal estate in a person appointed for the management thereof, according to the law of the place where the lunatic is residing.[1] If the property whose transfer is sought is in Court, the Court has a discretion to consider whether the whole or any or how much of the property is needed for the lunatic's maintenance or benefit,[2] and, *semble*, per Lindley, L.J., in *re Brown*,[3] the present section gives the Judge in Lunacy a discretion in other cases also. It is necessary to refer to, and distinguish, two cases which have been decided with reference to the subject under consideration.

re Barlow's Will.

In *re Barlow's Will*,[4] the Master in Lunacy appointed by the Supreme Court of New South Wales, under the New South Wales Lunacy Act (42 Vict. c. 7), applied for a transfer to him of certain funds belonging to a lunatic and paid into Court under the Trustee Relief Act. The lunatic in this case—a lady—was simply an "insane patient" who had not been dealt with by any judicial declaration of status. By the New South Wales Lunacy Act extensive powers of management of the property of such patients were given to the Master in Lunacy, and he was enabled to sue for and receive debts due to the patient, but the Act did not vest the patient's property in him. The Lords Justices held that the Master's claim *as of right* could not be sustained, since,

[1] *Re Clyde*, 1889, W.N. 1889, 43.

[2] *Volans* v. *Carr* (infant lunatic), 1848, 2 De G. & Sm. 242; cp. *Scott* v. *Bentley*, 1855, 1 K. & J. 281; *re Garnier*, 1872, L.R. 13 Eq. 532; and cp. 1895, 2 Ch. 666.

[3] 1895, 2 Ch. 666.

1887, 36 Ch.D. 287.

although he could enforce payment in New South Wales of any sums due to the patient, he could not, under the colonial statute, compel payment of any moneys due to her from persons in this country, inasmuch as there had been no actual vesting of her personal property in him so as to effect a devolution of the estate. But the Lords Justices also held that the funds having been paid into Court, the Court, acting as trustee, was justified in paying over to the Master anything which the competent authority in New South Wales decided to be necessary for the maintenance or benefit of the patient, and that a trustee would be entitled in such cases to make similar payments.

re Brown.

In *re Brown*,[1] a lady residing in the colony of Victoria was declared lunatic by the Supreme Court of the colony sitting in Lunacy, and the Master in Lunacy was appointed to manage her property, which consisted of English stocks standing in her name. There was no provision in the Victorian Act (54 Vict. No. 1113) vesting the property of the lunatic in the Master, in the sense of its being divested from the lunatic or made liable to pass to the Master's successor in office, or to the personal representatives in trust for the lunatic in case of the Master's death, and the Master was merely a receiver and manager, with power to act as such until a committee was appointed. The Court in Lunacy held that the property of the lunatic was vested in the Master within the meaning of this section, and that it had jurisdiction to order the transfer of the stocks to him.

Observations on *re Barlow's Will*, and *re Brown*.

It will be noticed that this case differs from *re Barlow's Will* in three particulars. In that case there was not, here there was, a judicial declaration of lunacy. *Re Barlow's Will* turned on the New South Wales Act 1890, and not on English legislation. Again in *re Barlow's Will* the funds in question had, here they had not, been paid into Court. But the Lords Justices in *re Barlow's Will* clearly indicated their opinion that if there had been such a judicial declaration of the insanity of the patient as to *vest* the lunatic's personal property in the Master, he would have stood in a different position as regards the English funds, and they did not expressly define *vesting*. Their view of its meaning does not appear to have differed materially from that adopted by the Court in Lunacy in *re Brown*. Thus Cotton, L.J.,[2] says: "Now where a committee is appointed, even though the Master may have authority under this Act to act in requiring payment of money or in providing certain things to be done for the lunatic, *there is a vesting of the right to the custody of the property of the lunatic*, so far as this Act could vest it (and I think it would apply to all personal estate wherever situate), in the committee, just as would be the case in England. As regards the Master there is nothing of the kind." Bowen, L.J.,[3] speaks of the statutory power of the Master enabling him only "to act for (the lunatic) without her assent in respect of her property *in the colony*," and not "to compel payments outside the colony." Fry, L.J.,[4] observes: "We have only

[1] 1895, 2 Ch. 666.
[2] 1887, 36 Ch.D., at p. 293.
[3] *Ubi sup.*, at pp. 295, 296.
[4] *Ubi sup.*, at p. 298.

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certain provisions which affect the management of the property, and affect it in the colony." This decision does not, therefore, contradict the view emphatically expressed by the Lords Justices in *re Brown*, that the word "vested" includes the right to obtain and deal with, without becoming actual legal owner of, the lunatic's property.

Fund representing real estate sold under special legislative jurisdiction. Partition Act.

This section is not applicable to a fund representing real estate which has been sold under a special jurisdiction created by the Legislature of this country in reference to land, the property in which is regulated solely by English law. The Partition Act 1868 is an instance of such legislation. The Court may, however, in such cases permit the income of the property to be paid from time to time to the foreign committee, curator, or other person duly appointed to act for the lunatic.[1]

In considering whether there has been a judicial declaration of lunacy, the Court will look to the substance rather than to the form of the declaration,[2] and see whether an order expressly or impliedly containing a decision to that effect has been made.[3]

Limitation of jurisdiction according to *lex loci actus*.

The Court under this section will limit,[4] though it will be slow to enlarge,[5] the exercise of its jurisdiction in conformity with the law of the country where the lunatic has been so declared.

Discretion of Court.

May order.—*Semble*, that the Court has a discretion under this section.[6] Thus in *re Stark*,[7] a case decided under 1 & 2 Geo. IV. c. 15, and 1 Will. IV. c. 65, the dividends only were ordered to be paid to the *curator bonis*, the Court not being satisfied that any capital was wanted for any immediate purpose. In *re Elias*[8] and *re Mitchell*,[9] however, the capital was transferred to the curator without security being required, on proof that he would have been entitled, if the property had been in Holland (in the former case) and Scotland (in the latter), to get it in without security.

Some fit person.—In *re Baynes*[10] an order was made for payment of dividends to the attorney in England of a curator appointed in Malta. As to Scotland and Ireland, see sec. 131, *ante*.

Dividends.—Definition of, sec. 341, *post*. As to receipt of dividends by curator of lunatic in Jersey, see *re Albo's Trusts*.[11]

Power to vest lands and release contingent right of lunatic trustee or mortgagee.

135. (1) When a lunatic is solely or jointly seised or possessed of any land upon trust or by way of mortgage the Judge in Lunacy may by order vest such

[1] *Grimwood* v. *Bartels*, 1877, 46 L.J. Ch., N.S., 788.
[2] Cp. *re Tarratt*, 1884, 51 L.T. 310.
[3] Cp. *re Barlow's Will*, per Cotton, L.J., 36 Ch.D., at p. 292.
[4] *Newton* v. *Manning*, 1849, 1 Mac. & G. 362 (a case decided under 1 Will. IV. c. 65).
[5] *Re Morgan*, 1849, 1 H. & T. 212.
[6] Per Lindley, L.J., in *re Brown*, *ubi sup.*, at p. 672.
[7] 1850, 2 Mac. & G. 174; and cp. *re Morgan*, 1849, *ib.*, at p. 175. In *re Garnier* and *Scott* v. *Bentley*, *ubi sup.*, p. 448 N. 2, the funds were in Court, in which case a discretion always exists.
[8] 1851, 3 Mac. & G. 234.
[9] 1881, 17 Ch.D. 515.
[10] 1881, 44 L.T., N.S., 322.
[11] 1863, 7 L.T., N.S., 778; *re Baker's Trusts*, 1871, L.R. 13 Eq. 168.

land in such person or persons for such estate, and in such manner, as he directs. Sec. 135 (1).

28. In the principal Act the word "seised" shall include any vested estate for life or of a greater description, and shall extend to estates at law and in equity in possession or in futurity in any lands; and the word "possessed" shall include any vested estate less than a life estate at law or in equity in possession or in expectancy in any lands. Lunacy Act 1891, s. 28. Definition of seised" and possessed.'

Subs. (1) of sec. 135 re-enacts in substance the first clause of sec. 3 of the Trustee Act 1850 (13 & 14 Vict. c. 60).

A lunatic.—By section 2 of the Trustee Act 1850 the term "lunatic" was defined as meaning any person found lunatic upon a commission of inquiry in the nature of a writ *de lunatico inquirendo*, and the term "person of unsound mind" as meaning any person, not an infant, who, not having been found lunatic, was incapable, from infirmity of mind, of managing his own affairs. Sec. 3 of the Trustee Act 1850, on which the present section is based, included both "lunatic" and "person of unsound mind." In the construction of the definition of the latter in the Trustee Act 1850, it was held that the incapacity referred to *must be shown to arise from infirmity of mind*, and that, consequently, mere aphasia, or paralysis, not accompanied by or springing from such infirmity, did not render a person "of unsound mind" within the meaning of the statute.[1] Lunatic. Unsound mind.

The term "lunatic" for the purposes of this section is defined in sec. 116, subs. (1), *ante*; and see sec. 341, *post*. It should be noted that under sec. 116, subs (1) (*d*), *ante*, the incapacity must be *mental infirmity arising from disease or age*. See notes to sec. 116, subs. (1) (*d*), *ante*.

Solely or jointly.—These words did not appear in sec. 3 of the Trustee Act 1850, and a doubt was raised as to the applicability of that section to a case where the lunatic was not solely seised or possessed of land on trust, or by way of mortgage, but was one of several trustees or mortgagees. This doubt arose in consequence of the fact that the two cases of sole title and joint title were expressly dealt with separately in sec. 5 of the statute. In *re Jones*,[2] however, it was held that sec. 3 applied where the lunatic was jointly as well as where he was solely, entitled, and the omission "Solely or jointly." Why used.

[1] *Re Barber*, 1888, 39 Ch.D. 187. In *re Phelp's Settlement Trusts*, 1885, 31 Ch.D. 351, Lindley, L.J., held that to satisfy the definition there must be such unsoundness of mind as would render the person liable to be so found if an inquisition were held upon him. But his lordship withdrew this opinion in *re Martin's Trusts*, 1886-87, 34 Ch.D., at p. 622; and cp. *re Dewhirst's Trusts*, 1886, 33 Ch.D. 416; *re Wakeford*, 1844, 1 J. & Lat. 2. Query whether imbecile included in definition (*re Good Intent Benefit Society*, 1854, 2 W.R. 671). And as to practice, see *re Jones*, 1842, 6 Jur. 545; *re Ramshay*, 1851, 15 Jur. 69; *re Ward*, 1850, 2 Mac. & G. 73; *re Currie*, 1878, 10 Ch.D. 93; *re Holland*, 1881, 16 Ch.D. 672.

[2] 1886, 33 Ch.D. 414.

Sec. 135 (1), (2).

in the Act of 1850 is now expressly supplied in accordance with that decision. See sec. 26, Trustee Act 1893 (56 & 57 Vict. c. 53).

"Seised," "possessed."

Seised or possessed.—The definitions of these terms respectively in sec. 28 of the Lunacy Act 1891 are taken from the interpretation clause in the Trustee Act 1850 (sec. 2). The interpretation clause in the Trustee Act 1893, sec. 50, includes in the definition of "possessed" the "receipt of income of any land."

Land.

Land.—See definition of in sec. 341, *post*. As to vesting orders where the property is (*a*) a contingent right in land, see subs. (2), *post*; (*b*) stock, see sec. 136, subss. (1), (3), (4), *post*; (*c*) choses in action, see sec. 136, subss. (1), (2), (3), *post*.

Lunatic vendor of real estate, query whether trustee.

Upon trust.—See definition of "trust," sec. 341, *post*. The question has from time to time been raised whether a vendor of real estate, who has become of unsound mind, can be regarded as a trustee for the purpose of applications under this section. The authorities establish the principle that where there is only a contract for sale, a decree for specific performance is necessary to make the vendor a trustee, but that where a contract has been executed by payment of the purchase-money, and a formal covenant to surrender, no suit is necessary;[1] and in a modern case[2] the rule was applied where only part of the purchase-money had been paid at the date of the petition—the order to be dated and drawn up after payment of the residue.

Transfer of mortgage.

Or by way of mortgage.—See definition of "mortgage," sec. 341, *post*. Where a lunatic is possessed of an estate by way of mortgage, the Court can under this section appoint a person to convey the estate for the purpose of effectuating a transfer of the mortgage.[3] In the case of a lunatic so found the committee will generally be appointed to execute the transfer.[4]

The Judge in Lunacy.—See sec. 108, subs. (1), *ante*.

By order.—As to effect of order, see subs. (3), *post*. As to alternative method open to the Court, viz. the appointment of a person to convey the land, see subs. (4), *inf*.

Form of order.

Where by an order under this section the estate of a trustee tenant in tail who is of unsound mind is vested in any person, the order should only direct the land to be vested in such person for all the estate which the trustee could convey if sane, and need not refer to the execution of a disentailing deed or to the Fines and Recoveries Act.[5]

Such person . . . directs.—The Court has jurisdiction to make an order under this section, although by so doing the number of trustees will be diminished.[6]

(2) When a lunatic is solely or jointly entitled to a

[1] *Re Cuming*, 1869, 5 Ch. 72; and *re Carpenter*, 1854, Kay 418, 420; *re Colling*, 1886, 32 Ch.D. 336; *re Bradley's Settled Estate*, 1885, 34 W.R. 148; and *re Norwich Town Close Estate Charity*, 1888, per Kekewich, J., 40 Ch.D., at p. 302.

[2] *Re Pagani*, 1892, 1 Ch. 236.

[3] *Re Nicholson*, 1887, 34 Ch.D. 662.

[4] Cp. *re Peel*, 1886, 55 L.T., N.S., 554.

[5] *Mason* v. *Mason*, 1878, 7 Ch.D. 707.

[6] *Re Leon*, 1892, 1 Ch. 348; *re Lee's Settlements*, 1896, 2 Ch. 508.

contingent right in any land upon trust or by way of mortgage the Judge may by order release such hereditaments from the contingent right, and dispose of the same to such person or persons as the Judge directs.

This subsection re-enacts the first clause of sec. 4 of the Trustee Act 1850 (13 & 14 Vict. c. 60).

See notes to subs. (1), *ante*.

Contingent right.—Definition of, sec. 341, *post*.

(3) An order under subsections (1) and (2) shall have the same effect as if the trustee or mortgagee had been sane, and had executed a deed conveying the lands for the estate named in the order, or releasing or disposing of the contingent right.

This subsection is based upon the second clauses of secs. 3 and 4 respectively of the Trustee Act 1850 (13 & 14 Vict. c. 60).

See notes to subss. (1) and (2), *sup*., and sec. 32, Trustee Act 1893 (56 & 57 Vict. c. 53).

Trustee.—Definition of, sec. 341, *post*.

Convey.—Definition of, sec. 341, *post*.

(4) In all cases where an order can be made under this section the Judge may, if it is more convenient, appoint a person to convey the land or release the contingent right, and a conveyance or release by such person in conformity with the order shall have the same effect as an order under subsections (1) and (2).

This subsection re-enacts the first and second clauses of sec. 20 of the Trustee Act 1850 (13 & 14 Vict. c. 60). Cp. Trustee Act 1893 (56 & 57 Vict. c. 53), sec. 33.

The Judge.—See sec. 108, subs. (1), *ante*.

May.—As to alternative method, viz. the making of a vesting order, see subs. (1), *sup*.

Appoint a person.—Under this subsection a person may be appointed to convey an estate for the purpose of effectuating a transfer of a mortgage.[1]

Convey.—Definition of, sec. 341, *post*.

Land.—Definition of, sec. 341, *post*; and see subs. (1), *ante*.

Contingent right.—Definition of, sec. 341, *post*; and subs. (2), *ante*.

Conveyance.—Definition of, sec. 341, *post*.

The same effect, etc.—See subs. (3), *sup*.

[1] *Re Nicholson*, 1887, 34 Ch.D. 662.

Sec. 135 (5), (6).

(5) Where an order under this section vesting any copyhold land in any person or persons is made with the consent of the lord or lady of the manor, such land shall vest accordingly without surrender or admittance.

This subsection re-enacts the first clause of sec. 28 of the Trustee Act 1850 (13 & 14 Vict. c. 60). Cp. sec. 34, subs. (1), Trustee Act 1893 (56 & 57 Vict. c. 53).

An order . . . vesting.—As to where the order is one appointing a person to convey under subs. (4), *sup.*, see subs. (6), *inf.* See form of order, Appx. *post.*

Evidence of consent

With the consent.—It is not necessary for the lord of the manor to appear in Court to consent to the vesting order. A verified certificate of consent is sufficient.[1]

Where vesting order made without consent.

Where the vesting order is made without the consent of the lord, there must be a surrender and admittance, and the petition need not be served upon the lord. The question of the lord's right to a fine will not, however, be prejudiced by the order.[2]

(6) Where an order is made appointing any person or persons to convey any copyhold land, such person or persons shall execute and do all assurances and things for completing the assurance of the lands; and the lord and lady of the manor shall, subject to the customs of the manor and the usual payments, be bound to make admittance to the land, and to do all other acts for completing the assurance thereof, as if the persons in whose place an appointment is made were free from disability and had executed and done such assurances and things.

This subsection re-enacts the second part of sec. 28 of the Trustee Act 1850 (13 & 14 Vict. c. 60). Cp. sec. 34, subs. (2), Trustee Act 1893.

See notes to subs. 5.

An order . . . appointing any person, etc.—See subs. (4), *ante.* As to vesting orders, see subs. (5), *sup.*

[1] *Ayles* v. *Cox*, 1853, 17 Beav. 584-586.

[2] *Paterson* v. *Paterson*, 1866, L.R. 2 Eq. 31; and cp. *re Flitcroft*, 1854, 1 Jur., N.S., 418; *re Hurst*, 1855, Seton 5th ed., 1031; and *re Heys' Will*, 1851, 9 Ha. 221; *Cooper* v. *Jones*, 1856, 25 L.J., N.S., Ch. 240; and *re Howard*, 1855, 3 W.R. 605, may be regarded as overruled. As to the fine to which the lord is entitled see *Bristow* v. *Booth*, 1869, L.R. 5 C.P. 80, in which it was decided that when the original trustee has not been admitted, one fine only is payable on the admission of the substituted trustee.

136. (1) Where a lunatic is solely entitled to any stock or chose in action upon trust or by way of mortgage, the Judge in Lunacy may by order vest in any person or persons the right to transfer or call for a transfer of the stock, or to receive the dividends thereof, or to sue for the chose in action.

Sec. 136 (1), (2).

Power to vest right to transfer stock and sue for chose in action.

This subsection re-enacts the first clause of sec. 5 of the Trustee Act 1850 (13 & 14 Vict. c. 60). Cp. sec. 35, Trustee Act 1893, as to this section.

A lunatic.—As to the scope of the term "lunatic" for the purposes of this section, see sec. 116, subs. (1), *ante.*

Solely entitled.—As to cases of joint title, see subs. (2), *inf.*

Stock.—Definition of, sec. 341, *post.* As to vesting of land, see sec. 135, subs. (1), *ante.*

Trust.—Definition of, sec. 341, *post.*

Mortgage.—Definition of, sec. 341, *post.*

Judge in Lunacy.—Definition of, sec. 108, subs. (1), *ante.*

May.—As to alternative method open to the Court, viz. the appointment of a person to transfer, see subs. (4), *post.*

(2) In the case of any person or persons jointly entitled with a lunatic to any stock or chose in action upon trust or by way of mortgage, the Judge may make an order vesting the right to transfer or call for a transfer of the stock, or to receive the dividends thereof, or to sue for the chose in action either in such person or persons alone or jointly with any other person or persons.

This subsection re-enacts the second clause of sec. 5 of the Trustee Act 1850 (13 & 14 Vict. c. 60).

See notes to preceding subsection, *sup.*

Jointly entitled.—As to the case of sole title, see subs. (1), *sup.*

Dividends.—Definition of, sec. 341, *post.*

Either in such person . . . or persons.—Where the co-trustees of a lunatic are out of the jurisdiction,[1] or decline to act,[2] the Court may under this subsection make an order vesting the right to transfer in the parties beneficially entitled, so as to avoid the necessity of vesting the right first in the co-trustees, and then (by a second order—made in Chancery) in the beneficiaries.

Where co-trustees out of jurisdiction or decline to act.

Where stock is standing in the name of two trustees in whom

Lunatic trustee of stock.

[1] *Re Stewart*, 1860, 8 W.R. 297.

[2] *Re White*, 1870, L.R. 5 Ch. 698, reported as *re Nicholl's Trusts*, in 22 L.T., N.S., 323.

Sec. 136 (3), (4).

alone the power of appointing new ones is vested, and one of the trustees is found lunatic by inquisition, the proper procedure in order to obtain a transfer of the fund into Court is by petition in lunacy.[1]

Irish property.

Section 56 of the Trustee Act 1850—which is repealed by the Trustee Act 1893—excluded Irish property from the lunacy jurisdiction. This difficulty was, however, overcome in *re Hodgson*[2] by an order appointing a person new trustee of the Irish stock in the place of the person of unsound mind, and directing him to concur with the other trustee in transferring the stock into Court.

Where the stock or shares with reference to which a vesting order is being made under this section are Government or other stocks, or shares upon which there is no liability for calls, and which are to be held by the trustees, the order should, as a rule, go on to direct the persons in whom the right to transfer or call for a transfer and to receive the dividends and income is vested to transfer the stocks or shares into their own names. But where shares are being dealt with on which there is a liability to calls, such directions should be omitted. Under the Trustee Act 1893 (56 & 57 Vict. c. 53), sec. 35, subs. (3), and under this Act, it is competent for a Judge to make an order in either form according to the special circumstances of the case.[3]

(3) When any stock is standing in the name of a deceased person, whose personal representative is a lunatic, or when a chose in action is vested in a lunatic as the personal representative of a deceased person, the Judge may make an order vesting the right to transfer or call for a transfer of the stock, or to receive the dividends thereof, or to sue for the chose in action in any person or persons he may appoint.

This subsection re-enacts sec. 6 of the Trustee Act 1850 (13 & 14 Vict. c. 60).

See notes to subss. (1) and (2), *sup.*

(4) In all cases where an order can be made under this section, the Judge may, if it is more convenient, appoint some proper person to make or join in making the transfer.

This subsection is based upon the third clause of sec. 20 of the Trustee Act 1850 (13 & 14 Vict. c. 60).

See notes to preceding subsections, also sec. 137, *inf.*

[1] *Re Drysdale*, 1861, 7 Jur., N.S., 667. [2] 1879, 11 Ch.D. 888.
[3] *Re Gregson*, 1893, 3 Ch. 233.

May.—As to similar alternative method in the case of land, see sec. 135, subs. (4), *ante.*

Some proper person.—As to indemnity of persons acting under such orders, see sec. 333, *post*; and see subs. (5), *inf.*

(5) The person or persons in whom the right to transfer or call for a transfer of any stock is vested, may execute and do all powers of attorney, assurances, and things to complete the transfer to himself or themselves or any other person or persons according to the order, and the Bank and all other companies and their officers and all other persons shall be bound to obey every order under this section according to its tenor.

This subsection is based on the first and second clauses of sec. 26 of the Trustee Act (13 & 14 Vict. c. 60), as amended by sec. 6 of the Trustee Extension Act 1852 (15 & 16 Vict. c. 55).

Transfer or call for a transfer.—Definition of "transfer," sec. 341, *post.*

Origin of subsection.

Sec. 26 of the Trustee Act 1850 enacted that where an order had been made vesting *the right to any stock* in any persons appointed by the Court, such right should vest accordingly, and the Bank should be equally bound to comply with the requisitions of such persons as it would have been with the requisitions of the persons in whose place they were appointed. The 35th section of the Act enabled the Court in such cases to make an order vesting in any person *the right to call for a transfer of any stock.* It was held in *re Smyth's Settlement,*[1] that an order directing *the right to the stock* to vest in new trustees was wrongly made, and that the Bank was not bound under it to permit the new trustees to make a transfer into their names. "It is so important," said the Vice-Chancellor, "to have the Bank books clear, that if there is room for argument, the strict interpretation must be followed. I think that the order must be according to the words of the section, and declare the new trustees entitled to call for a transfer, and then a transfer must be obtained in the usual way." Sec. 6 of the Trustee Extension Act 1852 removed this difficulty, providing that when an order is made vesting the right to any stock, the legal right to transfer such stock should vest accordingly.

The Bank.—Definition of, sec. 341, *post.*

Indemnity of, sec. 333, *post.*

Officers.—See secs. 137, *inf.*

(6) After notice in writing of an order under this section, it shall not be lawful for the Bank or any other

[1] 1851, 4 De G. & S. 499. Cp. *ex parte The Bank of England*, 1867, L.R. 2 Ch., at pp. 664 and 667; and *re Shortridge*, 1895, 1 Ch. 278, and *ante* p. 426.

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company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

This subsection is based on the last clause of sec. 26 of the Trustee Act 1850 (13 & 14 Vict. c. 60).

See notes to subs. (5), *sup.*

Stock.—Definition of, sec. 341, *post.*

Dividends.—Definition of, sec. 341, *post.*

Person to be appointed to transfer.

137. Where a person is appointed to make or join in making a transfer of stock, such person shall be some proper officer of the Bank, or the company or society whose stock is to be transferred.

This section is based on the third clause of sec. 20 of the Trustee Act 1850 (13 & 14 Vict. c. 60), and sec. 142 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Where a person is appointed.—See sec. 136, subs. (4), *ante.*

The Bank.—Definition of, sec. 341, *post.*

Charity trustees.

138. The powers conferred by this Act as to vesting orders may be exercised for vesting any land, stock, or chose in action in the trustee or trustees of any charity or society over which the High Court would have jurisdiction upon suit duly instituted, whether the appointment of such trustee or trustees was made by instrument under a power or by the High Court under its general or statutory jurisdiction.

This section re-enacts sec. 45 of the Trustee Act 1850 (13 & 14 Vict. c. 60). See sec. 39, Trustee Act 1893 (56 & 57 Vict. c. 53).

The powers . . . vesting orders.—See secs. 133 to 137, *ante.*

Land.—Definition of, sec. 341, *post;* and see sec. 135, *ante.*

Stock.—Definition of, sec. 341, *post;* and see secs. 133, 134, 136, *ante.*

Chose in action.—Definition of, sec. 341, *post;* and see secs. 134, 136, *ante.*

Vesting orders in case of charities.

Any charity.—Sec. 28 of the Charitable Trusts Act 1853 (16 & 17 Vict. c. 137) gives to any Equity Judge jurisdiction to make vesting orders in the case of charities, the gross annual income of which exceeds £30, notwithstanding a lunacy.[1] The High Court (as to

[1] Cp. *re Davenport's Charity*, 1855, 4 De G. M. & G. 839.

which see note to sec. 94, subs. (1), *ante*) has also jurisdiction to make similar orders in the case of a lunatic trustee or mortgagee who is an infant (see sec. 143, *post*). Sec. 139.

139. The Judge in Lunacy may make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under the provisions of this Act is to be exercised. Declarations and directions.

This section is based on the first clause of sec. 31 of the Trustee Act 1850 (13 & 14 Vict. c. 60).

The Judge in Lunacy.—See sec. 108, subs. (1), *ante*.

Declarations . . . directions.—The Judge in Lunacy may under this section order trustees to transfer a fund into Court under the Trustee Act 1893,[1] but cannot order the fund to be paid into Court directly.[2]

Stock or chose in action.—As to vesting of stock or chose in action, see secs. 133, 134, 136, subs. (2), *ante*.

140. *The fact that an order for conveying any land or releasing any contingent right has been founded upon an allegation of the personal incapacity of a trustee or mortgagee shall be conclusive evidence of the fact alleged in any Court upon any question as to the validity of the order, but this section shall not prevent a Judge of the High Court from directing a re-conveyance of any lands or contingent right dealt with by the order, or from directing any party to any proceeding concerning such land or right to pay any costs occasioned by the order when the same appears to have been improperly obtained.* Order to be conclusive evidence of allegation on which it is founded.

40. Where a vesting order is made as to any land under this Act, or under the Lunacy Act 1890, or under any Act relating to lunacy in Ireland, founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or personal representative or devisee of a mortgagee is out of the jurisdiction of the High Trustee Act 1893, sec. 40.

[1] Sec. 35, subs. (5). *Re Thornton's Trusts*, 1861, 9 W.R. 475; *re Draper's Settlement*, 1861, *ib.* 805.

[2] *Re Parby's Settlement*, 1857, 29 L.T., O.S., 72. As to application to have fund brought into Court, see *re Dawson*, 1865, 6 N.R. 346.

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Court, or cannot be found, or that it is uncertain which of several trustees, or which of several devisees of a mortgagee was the survivor, or whether the last trustee or heir or personal representative or last surviving devisee of a mortgagee is living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died and it is not known who is his heir or personal representative or devisee, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any Court upon any question as to the validity of the order; but this section shall not prevent the High Court from directing a reconveyance or the payment of costs occasioned by any such order if improperly obtained.

Section 140 was based on sec. 44 of the Trustee Act 1850 (13 & 14 Vict. c. 60), which was however repealed by sec. 342 of the Lunacy Act 1890, *post.*

Section 140 was in turn repealed by the Trustee Act 1893 (56 & 57 Vict. c. 53), and sec. 40 of that statute takes its place.

Land.—See definition of, sec. 341, *post.* It will be observed that this section relates only to land, and where the question at issue is validity of the order.[1]

Without an heir.—As to the case of a trustee and mortgagee dying intestate and without a representative, see Wolstenholme's Conveyancing Acts, 7th ed., p. 231.

Power to appoint new trustees.

141. In every case in which the Judge in Lunacy has jurisdiction to order a conveyance or transfer of land or stock or to make a vesting order, he may also make an order appointing a new trustee or new trustees.

This section re-enacts sec. 10 of the Trustee Extension Act 1852 (15 & 16 Vict. c. 55).

The Judge in Lunacy.—See sec. 108, subs. (1), *ante.*

Has jurisdiction.—See *ante* pp. 403, 414 *et seq.*

Conveyance.—Definition of, sec. 341, *post.*

Transfer.—Definition of, sec. 341, *post.*

Land.—Definition of, sec. 341, *post.*

Stock.—Definition of, sec. 341, *post.*

Vesting order.—See secs. 133-36, *ante.*

Object of section.

Scope of section.

Order . . . trustees.—The object of this section is to avoid applications both in Chancery and in Lunacy where an application in Lunacy is in any event necessary. The section is confined to the appointment of new trustees, and does not enable the Judge in Lunacy to

[1] Cp. *Collinson* v. *Collinson*, 1853, 3 De G. M. & G., at p. 414.

discharge a trustee alleged to be insane if the allegation is contested by him and he is willing to remain. In such a case the proper procedure is to establish the lunacy either by a petition for an inquisition or by an action in the High Court to remove the trustee.[1]

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Special powers for the appointment of new trustees in the place of trustees who are unfit to act or incapable of acting are contained in sec. 10 of the Trustee Act 1893 (56 & 57 Vict. c. 53), and sec. 38 of the Settled Land Act 1882.

142. The Judge in Lunacy may order the costs of and incident to obtaining an order under the provisions of this Act as to vesting orders and carrying the same into effect to be paid out of the land or personal estate or the income thereof in respect of which the order is made, or in such manner as the Judge may think fit.

Costs.

This section is based on section 51 of the Trustee Act 1850 (13 & 14 Vict. c. 60), which is repealed by the Trustee Act 1893 (56 & 57 Vict. c. 53); and see sec. 38 of that Act.

The Judge in Lunacy.—See sec. 108, subs. (1), *ante*.

The costs . . . an order.—The effect of the cases with reference to such costs is admirably dealt with in Lewin on Trusts, 9th ed., p. 1177 n. (*b*). It may be summarily stated as follows:—

Costs.

Where the lunatic against whom an order is sought is a trustee, the costs of the proceedings must be borne by the trust estate,[2] or the *cestui que trust*,[3] according as they are for the general benefit of the former or the special benefit of the latter.[4]

Lunatic trustee.

Where a lunatic against whom an order is sought is a mortgagee, the costs will be ordered to be paid out of the lunatic's estate, if he is beneficially interested in the mortgage money and the application is made by the committee.[5] In all other cases the costs must be paid by the mortgagor.[6] Where the application is made by the committee, the mortgagor need not be served, and although he should be served will not be allowed his costs.[7] If the mortgagor makes the application against a lunatic mortgagee who has a committee, he will have to bear the costs, unless the committee declined to act.[8] Where there is no

Lunatic mortgagee beneficially interested.

[1] *Re Combs*, 1884, 51 L.T., N.S., 45; *re Walker*, 1841, Cr. & Ph. 147; *re Campbell*, 1852, 18 L.T. 202.

[2] *Ex parte Brydges*, 1815, Coop. 290.

[3] *Ex parte Pearse*, 1823, Turn. & R. 325; and cp. *re Tufnell*, 1808, *ib.*, at p. 327, cited as *re Tuffnell*, 1 J. & W. 265.

[4] Cp. *re Wheeler*, 1852, 1 De G. M. & G. 435.

[5] *Re Wheeler*, 1852, 1 De G. M. & G. 435; *re Thomas*, 1853, 22 L.J., N.S., Ch. 858 (where it was held, however, that the mortgagor must bear the expense of the stamp); *re Biddle*, 1854, 23 L.J., N.S., Ch. 23; *re Stuart*, 1859, 4 De G. & J. 319; and see unreported cases cited in *re Wheeler*, 1 De G. M. & G., at p. 436.

[6] *Ex parte Clay*, 1830, Shelf. Lun. 510 (where the mortgage money had not been paid), and *re Jones*, 1860, 2 De G. F. & J. 554 (where it had).

[7] *Re Phillips*, 1869, L.R. 4 Ch. 629; and cp. *re Rowley*, 1865, 1 De G. J. & S. 417.

[8] *Re Wheeler, ubi sup.*

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committee, the reluctance of the Court to extend the rule laid down in *re Wheeler*,[1] the effect of which is to make the mortgagee pay the mortgagor's costs, would probably prevent any order as to costs being made.[2]

Lunatic mortgagee and trustee.

Where the lunatic against whom an order is sought is a mortgagee, and it appears on the face of the mortgage deed that he is a trustee of the mortgage, the costs must be borne by the mortgagor.[3] Where the fact that the lunatic is a trustee does not appear in the mortgage, and there is no evidence that the mortgagor was aware of it, the costs will follow the general rule above stated.[4]

Costs as between vendor and purchaser.

The costs of proceedings under this section, as between vendor and purchaser, fall on the estate of the vendor.[5] As between legal[6] and equitable[7] mortgagor and mortgagee, the costs of proceedings by the former will be postponed to that of proceedings by the latter in the case of a consent decree.

Saving of power of High Court.

143. The provisions of this Act as to vesting orders shall not affect the jurisdiction of the High Court as to any lunatic trustee or mortgagee who is an infant.

The provisions. . . . vesting orders.—See secs. 133-36, *ante*.

The jurisdiction.—This section is based on the principle that the High Court has jurisdiction over an infant *as such*, and that its jurisdiction is not affected by the fact that the infant is of unsound mind.[8]

As to the jurisdiction of the Court of Chancery over lunatics not so found, see *inf.*, and Part III. Trustee Act 1893.

High Court.—See note to sec. 94, subs. 1, *ante*.

It is not only over infants of unsound mind that the Chancery Division can exercise jurisdiction. In the exercise of its general jurisdiction over trusts it can direct the property of a person of unsound mind not so found by inquisition to be applied for his maintenance and benefit.[9] Here, however, as in the case of a lunatic infant, it interferes not by reason, but in spite, of the unsoundness of mind.[10] The influence of this idea is clearly discernible both in the history and in the present conditions of the exercise of this jurisdiction. It was at first limited to cases of persons who were parties or

Application in Chancery of property of lunatic not so found for his benefit.

Jurisdiction at first limited to parties or *quasi*-parties.

[1] 1852, 1 De G. M. & G. 435.

[2] Cp. *re Biddle, ubi sup.*; *re Viall*, 1856, 8 De G. M. & G. 439 (where part of the costs were thrown on the mortgage money); and *re Sparks*, 1877, L.R. 6 Ch.D. 361; *re Marrow*, 1841, Cr. & Ph. 142.

[3] *Re Lewes*, 1849, 1 Mac. & G. 23.

[4] *Re Townsend*, 1850, 1 Mac. & G. 686; *re Jones*, 1876, 2 Ch.D. 70.

[5] Cp. *Heard* v. *Cuthbert*, 1851, 1 Ir. Ch. 369; *Bradley* v. *Munton*, 1852, 16 Beav. 294. But see *re Liverpool Improvement Act* 1868, L.R. 5 Eq. 282 (overruling *re South Wales Company*, 1851, 14 Beav. 418), followed in *re South City Market Company* 1890, 25 L.R. Ir. 265.

[6] *Cook* v. *Hart*, 1871, L.R. 12 Eq. 459.

[7] *Wild* v. *Lockhart*, 1847, 10 Beav. 320.

[8] Cp. *re Arrowsmith's Trusts*, 1858, 4 Jur., N.S., 1123; *re Edwards*, 1879, L.R. 10 Ch. D. 605.

[9] *Re Bligh*, 1879, L.R. 12 Ch.D. 365.

[10] *Beall* v. *Smith*, 1873, per James, L.J., 9 Ch., at p. 92.

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quasi-parties to suits, the funds dealt with uniformly standing to the credit of such suits;[1] and was only extended in a gradual and tentative manner to cases of persons who were not parties, where there was a fund in Court,[2] or directed to be brought into Court,[3] or standing in the name of trustees applying for the direction of the Court.[4] The nature of the jurisdiction of the Court in such cases is also shown by the present conditions of its exercise. In the first place it is limited to ordering the income, or capital,[5] of a person of unsound mind, not so found, to be applied for his maintenance, so long as he lives under the care of a particular person who has charge of him.[6] (The Court has no power to appoint such person his guardian.)[7]

How extended.

Nature of jurisdiction.

In the second place, the Court must in some form or other have the property under its control.[8] Again, the property affected by the jurisdiction must be small.[9]

The orders made by the Court in the exercise of this jurisdiction are of great variety.

The common form is an order directing the payment of the income of the fund to some relative[10] or friend,[11] or next friend,[12] or *curator bonis*,[13] or official representative of the lunatic.[14]

Lunatic.—See definition of, sec. 341, *post*; and sec. 116, subs. (1), *ante*.

Trustee.—See definition of, sec. 341, *post*.

Mortgagee.—See definition of, sec. 341, *post*.

Orders of Judge in Lunacy and Certificates of Masters.

144. Every office copy of the whole of an order or report confirmed by fiat purporting to be signed by a

Office copies to be evidence.

[1] Per Lord Brougham, L.C., in *re Astley*, 1831, 2 Coop. *t.* C. 207; and cp. *Wilkinson* v. *Letch*, 1760, *ib.* 195; *Eldridge* v. *Croucher*, 1781, *ib.* 196; *Machin* v. *Salkeld*, 1784, *ib.* 198; *Price* v. *Bedford*, 1784, *ib.* 201; *Bird* v. *Lefevre*, 1792, 4 Br. C.C. 100; *Eyre* v. *Wake*, 1799, 4 Ves. 795.

[2] *Re Berry*, 1849, 13 Beav. 455; *re Irby*, 1853, 17 Beav. 334; *re Law*, 1861, 2 Jur., N.S., 410; but see *re Macfarlane*, 1862, 2 J. & H. 673.

[3] Cp. *Vane* v. *Vane*, 1876, 2 Ch.D. 124.

[4] Cp. *re Spiller*, 1860, 2 L.T., N.S., 71; *re T.* 1880, L.R. 15 Ch.D. 78.

[5] *Re Tuer's Will Trusts*, 1886, 32 Ch.D. 39. When it is proposed to employ capital in maintenance, the jurisdiction will be exercised with caution.

[6] *Re Bligh*, 1879, L.R. 12 Ch.D. 364.

[7] S.C., at p. 365; and cp. *re Brandon's Trusts*, 1879, L.R. 13 Ch.D. 773, correcting *Vane* v. *Vane*, *ubi sup.*

[8] *Re Grimmett's Trusts*, 1887, 56 L.J., N.S., Ch. 419; and cp. *re Tayler*, 1861, 2 De G. F. & J. 125, and *re Silva's Trusts*, 1888, 36 W.R. 366.

[9] *Gillbee* v. *Gillbee*, 1842, 1 Phill. 121; *re Burke*, 1860, 2 De G. F. & J. 124; *Bligh* v. *O'Connell*, 1878, 26 W.R. 311; *Vane* v. *Vane*, *ubi sup.*

[10] *Re Spiller*, *ubi sup.*; *Edwards* v. *Alvey*, 1846, 10 Jur. 650; *Bird* v. *Lefevre*, *ubi sup.* note 1; *Conduit* v. *Soane*, 1839, 5 My. & Cr. 111; *Steed* v. *Calley*, 1833, 2 My. & K. 52.

[11] Cp. *Wilkinson* v. *Letch*, *sup.* note 1.

[12] Cp. *re Coleman's Trusts*, 1866, 14 L.T., N.S., 587; *re Perry's Trusts*, 1875, 23 W.R. 335.

[13] Cp. *re Garnier*, 1872, L.R. 13 Eq. 532.

[14] Cp. *re Barlow's Will*, 1887, 36 Ch.D. 287.

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Master, and sealed or stamped with the seal of the Masters' Office, and every office copy of a certificate in lunacy shall at all times, and on behalf of all persons, and whether for the purposes of this Act or otherwise, be admitted as evidence of the order, report, or certificate of which it purports to be a copy, without any further proof thereof.

This section re-enacts in substance the last clause of sec. 100 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

As to orders and certificates, see Rules in Lunacy, 1892, rr. 60-68, *post*.

As to forgery of the Master's signature or seal, see sec. 147, *post*.

Without any further proof.—The authenticity of the office copy may, of course, be impugned.

Money orders to be acted upon.

145. Where an order relates to the payment, transfer, carrying over, or depositing of any cash, stocks, funds, annuities, securities, or other effects into or in Court to the credit of the matter of a lunatic, or to the payment, transfer, or carrying over, or other disposal by the Paymaster-General of any cash, stocks, funds, annuities, securities, or other effects standing in his name or deposited in his custody to the credit of the matter of a lunatic, or of any cash, stocks, funds, annuities, securities, or other effects to or in which a lunatic is entitled or beneficially interested, and which are not standing to the credit of a cause or matter depending in the High Court, the Paymaster-General and the Bank, and all other persons, shall act upon an office copy of the order.

This section is based on sec. 101 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), and sec. 29 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86).

Transfer.—Definition of, sec. 341, *post*.

Stocks.—Definition of, sec. 341, *post*.

Lunatic.—Definition of, sec. 341, *post*; and sec. 116, subs. (1), *ante*.

Paymaster-General.—Definition of, sec. 341, *post*; and see Supreme Court Funds Rules 1894.

High Court.—See note to sec. 94, subs. (1), *ante*.

146. All transfers and payments made in pursuance of this Act under an order or a Master's certificate shall be valid and binding on all persons. Sec. 146. Transfers to be binding.

This section is based on sec. 143 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), and sec. 17 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86).

Transfer.—Definition of, sec. 341, *post.*

147. If any person forges the signature of a Master, or forges or counterfeits the seal of the Masters' Office, or knowingly concurs in using any such forged or counterfeited signature or seal, or tenders in evidence any document with a false or counterfeit signature of a Master, or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall upon conviction be liable to penal servitude for a term not exceeding seven years, or to be imprisoned for a term not exceeding three years with or without hard labour. Forgery of signature of Master or seal of Masters' Office.

This section re-enacts sec. 102 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Percentage and Fees.

148. (1) The Lord Chancellor, with the concurrence of the Treasury, may make rules fixing the percentage and fees payable in proceedings relating to lunatics and their estates, and regulating the mode in which the same are to be ascertained and paid. Percentage and fees. (Act of 1889, s. 88, subs. (2).)

27. (3) The power conferred by section one hundred and forty-eight of the principal Act to make rules fixing percentage and fees shall be deemed to extend to all proceedings under the principal Act or this Act, whether relating to lunatics so found by inquisition or to any other person in relation to whom or to whose property an order under the said Acts has been or may be made. Provided that in the case of lunatics under the protection of the Judge in Lunacy by virtue of the transmission of the record of an inquisition from Ireland and its entry Act of 1891, s. 27, subs. (3).

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of record in the High Court, and in the case of persons residing out of England and declared lunatic according to the laws of their place of residence, no percentage shall be levied except upon income arising from property within the jurisdiction of the Judge in Lunacy and administered under his direction.

Subs. (1) of sec. 148 re-enacts in substance sec. 88, subs. (2) of the Lunacy Act 1889.

The Lord Chancellor.—See note to sec. 10, subs. (3), *ante.*

Treasury.—See note to sec. 39, subs. (6), *ante.*

Rules.—See Rules in Lunacy 1892, rr. 126 *et seq.*, *post.*

Rule 126 provides that there shall be paid a percentage at the rate of 4 per cent on *the clear annual income* amounting to £100 and upwards of every lunatic so found by inquisition, but so that no larger sum shall be payable in any case in any one year than £400.

re Grehan. In *re Grehan*,[1] a lunatic was so found by inquisition in England, and the record transmitted to Ireland, where all her property was situate, and a sum was remitted from Ireland to her committee in England for her maintenance. A percentage on her clear annual income was paid to the Irish Court of Lunacy in accordance with sec. 109 of the Lunacy Regulation (Ireland) Act 1871 (34 & 35 Vict. c. 22). By sec. 114 of that statute the Irish Chancery can only levy the percentage in the case of lunatics so found in England where the record of the inquisition has been transmitted to Ireland; and sec. 27, subs. (3) of the Lunacy Act 1891 confines the percentage in the case of lunatics so found in Ireland to income arising from property situate in England. While, however, the obvious intention of the Legislature was to prevent the possibility of double taxation of the same property, none of the Acts contained a provision to meet such a case as *re Grehan*, where the lunatic was so found in England, and the percentage was claimed by the English Court in Lunacy, on income from property situate in Ireland; and it was strenuously urged on behalf of the Crown that there was a *casus omissus* incapable of being supplied by judicial construction. It was held, however, by Lord Halsbury, L.C., and Lindley, L.J. (A. L. Smith, L.J., dissenting), that the English Court of Lunacy was not entitled to a similar percentage on the sum remitted to England for the lunatic's maintenance. Lord Halsbury said: "I confess . . . I have come to the conclusion, although with some difficulty and hesitation, that . . . 'the clear annual income' is that which has been already taxed in Ireland and paid 4 per cent, and that therefore there is no obligation to pay the 4 per cent again in England upon that which is not the clear annual income in any sense, but is a part of that clear annual income which has been transmitted from Ireland charged with the performance of a particular duty." Lindley, L.J., appears to have grounded his decision on the fact that the Court had to deal with a case of money remitted, not from a foreign country or a colony, but from a country governed by three statutes of the United

[1] 1895, 2 Ch. 12.

Kingdom which it was the duty of the Court to make workable if they could. Smith, L.J., in expressing his dissenting opinion, observed: "I cannot myself say this (sum) was not the clear annual income of the lunatic when it came to this country, simply because it has had to pay 4 per cent under the Irish Act in Ireland before it came here, any more than if there had been any other tax peculiar to Ireland which would have fallen upon this income."

Lunatics.—See sec. 116, subs. (1), *ante*. The subsection under consideration is extended to all the classes enumerated in sec. 116, subs. (1), by sec. 27, subs. (3) of the Act of 1891.

Shall be deemed, i.e. shall be conclusively taken. As to meanings of "deemed," see *ante* p. 138.

(2) Save as otherwise provided by the Rules in Lunacy, the percentage and fees in lunacy shall be subject to the rules contained in section twenty-six of the Supreme Court of Judicature Act 1875.

38 & 39 Vict. c. 77, s. 26.

The Rules in Lunacy.—See sec. 338, subss. (2), (5), *post*, and Rules in Lunacy 1892, r. 126, *post*.

(3) The percentage or a proper proportionate part thereof (as the case may require) shall be charged upon the estate of a lunatic, and be payable thereout, although before payment thereof he die, or the inquisition be superseded, or be vacated and discharged on a traverse; but in either of the two last-mentioned cases the Judge in Lunacy may, if he thinks fit, remit or reduce the amount of the sum to be paid.

This subsection re-enacts the first clause of sec. 28 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

See notes to preceding subsection.

Superseded.—See *ante* p. 318.

Traverse—See *ante* p. 306.

The Judge in Lunacy.—See sec. 108, subs. (1), *ante*.

(4) Where it is made to appear to the Judge in Lunacy that the property of a lunatic does not exceed seven hundred pounds in value, or that the income thereof does not exceed fifty pounds per annum, he may order (if he thinks fit) that no fee shall be taken, or percentage levied

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in relation to the proceedings in the matter of the property, as from the date of the order or such other time as he directs, during the continuance of the lunacy or until further order.

This subsection re-enacts sec. 32 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

See notes to preceding subsections.

Extent of power to fix percentage and fees.

149. *The provisions of this Act as to percentage and fees shall extend—*

(a) *To lunatics so found by inquisition;*

(b) *To lunatics for the administration of whose property an order has been made before the commencement of this Act, or may hereafter be made under this Act;*

(c) *To lunatics under the protection of the Judge in Lunacy by virtue of the transmission of the record of an inquisition from Ireland, and its entry of record in the High Court;*

(d) *To persons residing out of England, and declared lunatic according to the laws of their place of residence, where the Judge in Lunacy makes an order affecting the property of such persons or any part thereof.*

Provided that in the two last-mentioned cases no percentage shall be levied except in respect of income arising from property within the jurisdiction of the Judge in Lunacy, and administered under his direction.

This section, which was based on sec. 33 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), is repealed by the Lunacy Act 1891. Sec. 27, subs. (3) of that statute, *sup.*, takes its place.

Sec. 150 (1).

Part V.

THE COMMISSIONERS IN LUNACY.

Constitution of the Commission.

150. (1) There shall continue to be Commissioners in Lunacy, and such of them as are qualified for appointment by being medical practitioners or barristers, shall be entitled to receive salaries. The Commissioners in Lunacy.

This subsection follows sec. 3 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Continue to be.—As to the origin of the office of Commissioners in Lunacy, see notes to sec. 1, *ante*. As to qualification of, see sec. 151, subs. (2), *post*. The words "there shall continue to be" would probably, in spite of sec. 337, *post*, prevent any complete amalgamation of the Lunacy Offices without fresh legislation. See as regards the Masters, sec. 111, subs. (1), *ante*, and the Chancery Visitors, sec. 163, subs. (1), *post*.

Commissioners in Lunacy.—There are ten Commissioners in Lunacy, four unpaid, and six paid, of whom three are legal and three are medical Commissioners.

Qualified.—As to qualification of medical and legal Commissioners, see sec. 151, subs. (2), *post*. A Commissioner is disqualified if he is, or within one year prior to his appointment has been, interested in a licensed house (sec. 158, subs. (1), *post*), or becomes so (*ib.* subs. (2)); and any disqualified person continuing to act is guilty of misdemeanour (*ib.* subs. (3), *post*). As to qualification and disqualification of secretary to Commissioners, see sec. 154, subs. (5), and sec. 158, *post*; of Masters in Lunacy, see sec. 111, subs. (3), *ante*; of Chancery Visitors, see sec. 163, subs. (2), *post*, and secs. 164, 165, *post*. Qualification of Commissioners.

Medical practitioners.—Definition of, sec. 341, *post*. No standing in point of time is required in the case of medical practitioners (see sec. 151, subs. (2), *inf.*). Nor is it necessary that the medical Commissioner should be in actual practice at the date of his appointment (see sec. 341, *post*). Medical practitioners.

Barristers.—Practising barristers of not less than five years' standing are eligible for the office, sec. 151, subs. (2), *inf.* It is rather singular that whereas a minimum of five years is prescribed in the case of a legal Commissioner in Lunacy, the secretary to the Commissioners is required to be a barrister of at least seven years' standing (see sec. 154, subs. (5), *post*). Barristers.

Salaries.—As to salaries of, see subs. (2), *inf.*

Sec. 150 (2), (3).

(Salaries and expenses of.)

(2) The salaries of the paid Commissioners and the expenses of the Commissioners to the amount sanctioned by the Treasury, shall be paid out of moneys provided by Parliament.

Cp. sec. 13 and Sched. iii. Part II. of the Courts of Justice (Salaries and Funds) Act 1869 (32 & 33 Vict. c. 91).

Salaries.—The salary of a paid Commissioner is £1500 a year.

Paid Commissioners.—The three legal and three medical Commissioners (see subs. (1)) are paid.

Treasury.—See definition of in sec. 12, subs. (2) of the Interpretation Act 1889 (52 & 53 Vict. c. 63), cited *ante* p. 190.

(Paid Commissioners not to carry on profession, etc.)

(3) A Commissioner shall not, so long as he remains Commissioner and receives any salary in respect of his office, accept, hold, or carry on any other office or situation, or any profession or employment, from which any profit is derived.

This subsection re-enacts the latter part of the second clause of sec. 3 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

A Commissioner.—This subsection relates to the paid Commissioners (as to whom see subss. (1) and (2), *sup.*) alone. *Semble*, that it would not apply to a temporary substitute for a Commissioner appointed under sec. 151, subs. (3), *post*. But the substitute must be "qualified to be a medical or legal Commissioner," and the circumstances referred to in sec. 158, subss. (1) and (2), *post*, would be a disqualification.

Query whether subsection applies to substitute for Commissioner.

Any salary.—As to salaries of Commissioners, see note to subs. (2), *sup.* The Metropolitan Commissioners, who were appointed by the Act of 1828, and whose jurisdiction was extended to the provinces by Acts passed in 1842 and 1843, were a fleeting body. The officers engaged in it were not permanent officers, and they were allowed to follow other vocations; the medical officers and lawyers were only paid so much per hour and for special work done. As the expenses of this system were increasing rapidly, and the subject of lunacy was assuming great importance, it was thought advisable that there should be a permanent Commission with a permanent staff of officers, who should be precluded from following their profession, and should give their time exclusively to the business of lunacy and the necessary visitations.[1]

Salaries.

Origin of present system.

Vacancies among the Commissioners may be filled.

151. (1) As often as a Commissioner dies, or is removed from his office, or is disqualified, or resigns, or

[1] Report of 1859, Ans. 6, Lord Shaftesbury's evidence.

refuses or becomes unable through illness or otherwise to act, the Lord Chancellor may appoint a person to be Commissioner in his place.

Sec. 151 (1), (2)

This subsection re-enacts the first part of the first clause of sec. 4 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

A Commissioner.—This includes both paid and unpaid Commissioners. As to appointment of paid Commissioner resigning his office to be unpaid Commissioner, see proviso to subs. (2), *inf.*

Is removed from his office.—A Commissioner, paid or unpaid, may be removed from his office by the Lord Chancellor for misconduct, or, in the case of a paid Commissioner, for any contravention of sec. 150, subs. (3), *sup.*

Is disqualified.—As to disqualification of Commissioners, see sec. 158, *post.*

Becomes unable, etc.—As to appointment of substitute in case of temporary absence or disability, see subs. (3), *post.*

The Lord Chancellor.—See definition of in sec. 12 of the Interpretation Act 1889 (52 & 53 Vict. c. 63), cited *ante* p. 198.

Appoint, etc.—As to filling up vacancies among the Commissioners, see subs. (2), *inf.* As to temporary appointment of substitutes, see subs. (3), *inf.*

(2) Every person appointed in the place of a medical practitioner shall be a medical practitioner, and every person appointed in the place of a barrister shall be a practising barrister of not less than five years' standing, and every person appointed in the place of any other Commissioner shall be neither a medical practitioner nor a practising barrister. Provided that a medical or legal Commissioner may upon resigning his office be appointed to fill any vacancy among the unpaid Commissioners, and if so appointed he may, upon the request of any four of the Commissioners, perform any duty which he might have performed before his resignation. Provided also that the secretary for the time being of the Commissioners shall be eligible to be a Commissioner in the place of a barrister.

This subsection is based on sec. 4 of the Lunacy Act 1845, sec. 39 of the Lunacy Act 1853 (16 & 17 Vict. c. 96), and sec. 73, subs. (1) of the Lunacy Act 1889.

Sec. 151 (2).

Every person.—This sentence re-enacts the latter part of the first clause of sec. 4 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

"Appointed in the place."

Appointed in the place.—These words seem, at first sight, to point to some change in the qualification of a Commissioner. But the Act of 1845, from the fourth section of which they are borrowed, *continued* the office of Commissioner already erected by the Act of 1829, and hence it was only necessary to make provision for future appointments. See the words "continue to be" in subs. (1), *ante*. As to temporary appointment of substitute, see subs. (3), *inf*.

Medical practitioner.—Definition of, sec. 341, *post*. There are three medical Commissioners.

A barrister.—There are three legal Commissioners.

Practising barrister.

A practising barrister.—It would probably be held, if this question can be conceived of as arising, a sufficient qualification that the barrister was holding himself open for practice. The secretary to the Commissioners is eligible for this appointment, see second proviso to this subsection, *inf*. Neither the Master in Lunacy (sec. 111, subs. (3), *ante*), nor the secretary to the Lunacy Commission (sec. 154, subs. (5)), nor the legal Chancery Visitor (sec. 163, subs. (4)) is required to be a practising barrister.

Five years' standing.—This qualification was first introduced by the Act of 1845. Curiously enough, in the case of the secretary to the Lunacy Commissioners, a minimum of seven years' experience is required (see sec. 154, subs. (5), *post*). Possibly the reason for this requirement is that the secretary is charged with the duty of prosecuting for offences (see sec. 325, *post*).

Duties of unpaid Commissioners.

Any other Commissioner . . . barrister.—See first proviso to this subsection, *inf*. The unpaid Commissioners take a part in the business of the Lunacy Commission, and have powers nearly co-ordinate with the paid Commissioners. But the statutory duties of visitation must be performed by a medical and a legal Commissioner in conjunction. As to the importance of the lay element on the Commission, see Report of 1859, Lord Shaftesbury's evidence, Ans. 8.

Provided that.—This proviso re-enacts sec. 73, subs. (1) of the Lunacy Act 1889, with the addition of the word "unpaid," *inf*., to show the meaning more clearly.

The unpaid Commissioners.—See note to "any other Commissioner," *sup*.

The request of any four, etc., i.e. of the Commissioners, whether paid or unpaid.

Perform any duty . . . resignation.—The unpaid Commissioners do not perform the statutory duties of visitation, except under the terms of this proviso.

Provided also.—This proviso is borrowed from sec. 39 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

The secretary.—As to appointment, etc., of, see sec. 154, *post*.

A Commissioner . . . barrister.—This proviso makes the secretary eligible for promotion to a paid legal Commissionership. Query

whether the secretary can, on resigning his office, be appointed an unpaid Commissioner.

(3) In case of the temporary illness or disability of a medical or legal Commissioner, the Lord Chancellor may, on the recommendation of the Commisioners, appoint a person qualified to be a medical or legal Commissioner to be his substitute so long as the illness or disability continues, and the substitute may exercise all the powers of the person for whom he acts.

(Appointment of substitute. Act of 1889, s. 73, subs. (2).)

Origin of subsection.

This subsection re-enacts sec. 73, subs. (2) of the Lunacy Act 1889. That subsection was passed on the recommendation of the Commissioners in Lunacy in their 33rd Annual Report (p. 135, par. 11), that power should be given to appoint a substitute for a Commissioner temporarily disabled by illness or unavoidably absent inasmuch as such a power existed already in the case of the Chancery Visitors (under sec. 21 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), now sec. 168 of the Act of 1890) and county court judges (cp. County Courts Act 1846 (9 & 10 Vict. c. 95), sec. 20; County Courts Act 1856 (19 & 20 Vict. c. 108), sec. 6, now County Courts Act 1888 (51 & 52 Vict. c. 43), sec. 18).

Temporary.—As to removal for, or vacancy owing to, permanent causes, see subs. (2), *sup.*

A medical or legal Commissioner.—Temporary vacancies need to be filled up in these cases because of the statutory duties of visitation resting upon, and capable of being discharged only by, the medical and legal Commissioners (see sec. 187, subs. (1), *post*).

The Commissioners, i.e. paid and unpaid.

Qualified.—As to qualification, see subs. (2), *sup.* *Semble*, that the secretary to the Commission, being a person qualified to be a legal Commissioner, could be appointed as a substitute for one.

A medical or legal, i.e. a medical Commissioner to a medical, and a legal to a legal, vacancy. The words "respectively," or "as the case may be," would make the meaning of the subsection clearer. The provisions in subs. (2), *sup.*, do not deal with temporary appointments.

All the powers.—As to the powers and duties of medical and legal Commissioners, see sec. 187, *post.*

(4) The Commissioners for the time being may act notwithstanding any vacancy in their body.

(Commissioners may act notwithstanding vacancy.)

This subsection re-enacts the last clause of sec. 4 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Sec. 151 (5).

Act.—So long as the provisions of the statute as to number and qualification are complied with.

(Declaration by Commissioners.)

(5) Every Commissioner hereafter appointed shall, before he acts as Commissioner, make before the Lord Chancellor, or before any three Commissioners qualified to act, the declaration to be made by a Commissioner set forth in the First Schedule.

This subsection re-enacts sec. 6 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), with this exception, that in accordance with the provisions of the Promissory Oaths Act 1868 (31 & 32 Vict. c. 72), a declaration now takes the place of an oath.

Every Commissioner.—Paid or unpaid.

The Lord Chancellor.—See definition of, in sec. 12 of the Interpretation Act 1889 (52 & 53 Vict. c. 63), cited *ante* p. 198.

Qualified to act, i.e. as Commissioners. See sec. 150, subs. (3), sec. 151, subs. (2), *ante.*

The declaration . . . Schedule.—See Form 1, *post.*

Licences and instruments to be sealed.

152. (1) All licences, orders, and instruments granted or made, or issued, or authorised by the Commissioners, in pursuance of this Act, except such orders or instruments as are to be made or signed and sealed by one Commissioner or two or more Commissioners, shall be sealed with the seal of the Commission.

This subsection re-enacts the first clause of sec. 7 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Licences.—As to the granting of licences by the Commissioners, see sec. 207, *post.*

Orders, e.g. orders for discharge of patient, see sec. 72, subs. (3), *ante;* for closing of registered hospital, see sec. 237, subs. (3), *post;* and for prosecutions, sec. 317, subs. (3), *post,* require to be under seal.

Instruments.—The summons of witnesses must be under seal of Commission if by Commissioners, sec. 332, subs. (1), *post.*

The Commissioners.—Definition of, sec. 341, *post.*

Appointment, etc., of, secs. 150, 151, *ante.*

Except . . . Commissioners, e.g. orders for reception of pauper lunatic, sec. 23, *ante;* for admission to patients of friends, relations, and others, sec. 47, subs. (1), *ante;* for the removal of lunatics, see sec. 59, subs. (1), *ante,* and sec. 60, subs. (1), *ante.*

Sec. 152 (2), (3).

(2) All such licences, orders, and instruments, or copies thereof, purporting to be sealed with the seal of the Commission, shall be received as evidence of the same respectively, and of the same respectively having been granted, made, issued, or authorised by the Commissioners, without any further proof thereof. (Licences, etc., evidence without further proof.)

This subsection re-enacts the second clause of sec. 7 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

All such, etc.—See subs. (1), *sup.*

See notes to preceding subsection.

Evidence.—The evidence may, of course, be rebutted.

(3) A licence, order, or instrument, or copy thereof, shall not be valid, or have any force or effect, unless it is so sealed. (Licences, etc., not valid unless sealed.)

This subsection re-enacts the last clause of sec. 7 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsections.

153. (1) There shall be a permanent chairman of the Commissioners. Appointment of permanent chairman and mode of voting.

This subsection follows sec. 8 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

A permanent chairman.—As to choice of, see subs. (2), *inf.* Is not to be a paid member, subs. (2), *inf.* Has casting vote, subs. (5), *inf.* As to temporary chairman, see subss. (3)-(5), *inf.* (Chairman.

The Commissioners.—See secs. 150, 151, *ante.*

(2) If a permanent chairman dies, or declines, or becomes incapable to act as chairman, or ceases to be a Commissioner, the Commissioners, or any five of them at a meeting specially summoned for the purpose, shall select a member of their body, not being a paid Commissioner, to be permanent chairman. (Death, etc., of chairman.)

This subsection re-enacts the second clause of sec. 8 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsection.

Dies . . . Commissioner.—As to filling up of vacancies among Commissioners, see sec. 151, *ante.*

Sec. 153 (3)-(5).

Incapable to act, e.g. through mental infirmity, or disqualification under sec. 158, *post.*

The Commissioners.—Definition of, sec. 341, *post.*

Appointment, etc., of, etc., secs. 150, 151, *ante.*

"Meeting specially summoned."

A meeting specially summoned.—The meeting is summoned by the secretary, but apparently only on the written requirement of a Commissioner (see sec. 160, subs. (1), *post*). As to meetings for granting licences, see sec. 159, *post.*

A paid Commissioner.—As to paid Commissioners, see sec. 150, subs. (1), *ante.*

(Absence of chairman.)

(3) If the chairman is absent from a meeting, a majority of the members present may elect a chairman for that meeting.

This subsection re-enacts the third clause of sec. 8 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsections.

The chairman.—*Semble*, that a paid Commissioner may be elected chairman for the meeting under this section.

A meeting.—As to meetings, see sec. 159, *post.*

(Majority of votes.)

(4) Questions shall be decided by a majority of votes.

This subsection re-enacts the first part of the last clause of sec. 8 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsections.

(5) The chairman of the meeting shall have a vote, and in the event of an equality of votes he shall have a casting vote.

Query as to casting vote of chairman.

This subsection re-enacts the latter part of the last clause of sec. 8 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), which expressly provided that the chairman of the meeting, whether permanent or temporary, should have a casting vote. It is conceived that under this subsection, in spite of the omission of that express provision, the same rule applies.

See notes to preceding subsections.

The secretary to the Commissioners.

154. (1) There shall be a secretary to the Commissioners.

This subsection follows sec. 9 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

A secretary.—As to removal of, see subs. (2), *inf.*; appointment of, subs. (3), *inf.*; salary of, subs. (4), *inf.*; standing of, subs. (5), *inf.*;

superannuation allowances to, sec. 156, *post*; declaration by, sec. 157, *post*; disqualification of, sec. 158, *post*; duties of in regard to meetings, secs. 160, 161, *post*; qualified to be elected legal Commissioner, sec. 151, subs. (2), *ante*; prosecution by, sec. 325, subs. (1) (*a*), *post*; certificate by as to continuance of reception order, sec. 38, subs. (9), *ante*; documents to be furnished by to lunatic after discharge, sec. 82, *ante*; fee to for licence, sec. 217, subs. (1), *post*; search by as to person in confinement, sec. 51, *ante*; copies of case-book entries to be sent to, r. 14, Rules of Commissioners in Lunacy, 1895, *post*.

The Commissioners.—Definition of, sec. 341, *post*.

Appointment, etc., of, secs. 150, 151, *ante*.

(2) The secretary for the time being may be removed by the Lord Chancellor on the application of the Commissioners.

(Removal of secretary.)

This subsection re-enacts the second clause of sec. 9 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsection.

Removed.—As to removal of Commissioners, see sec. 151, subs. (1), *ante*. Of Chancery Visitors, sec. 164, *post*.

The Lord Chancellor.—See definition of in sec. 12 of the Interpretation Act 1889 (52 & 53 Vict. c. 63), cited *ante* p. 198.

(3) If the office of secretary is vacant, the Commissioners, with the approbation of the Lord Chancellor, may fill the vacancy.

(Appointment of secretary.)

This subsection re-enacts the third clause of sec. 9 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), except that the power of appointment was then imperative instead of, as it is now, permissive. Possibly the change was made in view of the contemplated amalgamation of the Lunacy Offices (see sec. 337, *post*).

See notes to preceding subsections.

With the approbation.—The nominee of the Commissioners, and not merely the filling of the vacancy, must be approved by the Lord Chancellor. *Aliter*, in the case of the clerks to the Commissioners, where the Treasury merely sanctions the number to be appointed (see sec. 155, subs. (1), *post*).

(4) The secretary shall, in the performance of his duties, be subject to the inspection, direction, and control of the Commissioners. His salary shall be of such amount as the Treasury, with the concurrence of the Lord Chancellor, determines.

(Position and salary of secretary to Commissioners. Act of 1889, s. 75.)

Sec. 154 (5).

See notes to preceding subsections.

The secretary . . . Commissioners.—This clause re-enacts the fourth clause of sec. 9 of the Lunacy Act 1845 (8 & 9 Vict. c. 100). The duties of the secretary may be regulated by rules and orders of the Commissioners (see sec. 161, subs. (1), *post*).

His salary . . . determines.—This clause re-enacts the first part of sec. 75 of the Lunacy Act 1889.

The salary of the secretary to the Commissioners in Lunacy is at present £800 a year. As to the funds out of which it is payable, see sec. 155, subs. (2), *inf.*

The Treasury.—See notes to sec. 150, subs. (1), *ante.*

(Qualification of secretary. Act of 1889, s. 75.)

(5) Every person appointed secretary shall be a barrister of at least seven years' standing, and shall for all purposes be deemed to be a permanent civil servant of the state.

This subsection re-enacts the latter part of sec. 75 of the Lunacy Act 1889.

See notes to preceding subsections.

"A barrister."

A barrister.—It is not necessary that he should be a practising barrister, as in the case of a legal Commissioner (sec. 151, subs. (2), *ante*). Neither a Master (see sec. 111, subs. (3), *ante*) nor a legal Chancery Visitor (see sec. 163, subs. (2), *post*) is required to be a *practising* barrister.

Deemed, i.e. conclusively taken to be. As to meanings of word "deemed," see *ante* p. 138.

"Permanent civil servant."

A permanent civil servant.—As to the effect of this see the Superannuation Act 1859 (22 Vict. c. 26), the Pensions Commutation Act 1871 (34 & 35 Vict. c. 36), and the Superannuation Act 1887 (50 & 51 Vict. c. 67).

Clerks to Commissioners.

155. (1) The Commissioners may appoint such number of clerks as the Treasury sanctions.

This subsection follows sec. 11 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The Commissioners.—Definition of, sec. 341, *post.*

Appointment, etc., of, secs. 150, 151, *ante.*

May appoint.—As to persons disqualified for appointment, see sec. 158, *post.*

Clerks.—The duties of may be regulated by rules and orders of the Commissioners made under sec. 161, subs. (1), *post.*

As to declarations by, before acting, sec. 157, *post.*

The Treasury.—See note to sec. 150, subs. (2), *ante.* The Treasury merely fixes the number of clerks. The Commissioners determine the *personnel* of the staff. *Aliter*, in the case of the secretary to

the Commission, where the approval by the Lord Chancellor of the Commissioners' nominee is needed, see sec. 154, subs. (3), *ante*. As to salaries of clerks, see subs. (2), *inf*. As to superannuation allowances, see sec. 156, *post*. As to declaration by, see sec. 157, *post*. Sec. 154 (2).

(2) The clerks to the Commissioners shall be paid such salaries as the Treasury assigns. The salaries of the Commissioners, secretary, and clerks, and their expenses, to the amount sanctioned by the Treasury, shall be paid out of moneys provided by Parliament. (Salaries of Commissioners, clerks, etc.)

See notes to preceding subsection.

The clerks . . . assigns.—Cp. sec. 11 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), where the salaries of the clerks were limited to such sums as the Commissioners should think proper, subject to a maximum of £200 for the first two clerks, and £200 more for any additional clerks.

The salaries . . . Parliament.—The clause is based upon sec. 13 and Sched. iii. Part II. of the Courts of Justice (Salaries and Funds) Act 1869 (32 & 33 Vict. c. 91). As to the salaries of the Commissioners, see sec. 150, subs. (2), *ante*; of the secretary, see sec. 154, subs. (4), *ante*. Out of what moneys payable.

156. As respects superannuation allowances, the paid Commissioners and the secretary and clerks shall be subject to the provisions of the Superannuation Act 1859 and the Superannuation Act 1887. Superannuation allowances. 22 Vict. c. 26. 50 & 51 Vict. c. 67.

This section, as regards the Commissioners and the secretary, is based upon the provisions of secs. 5 and 10 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), sec. 15 of the Superannuation Act 1859 (22 Vict. c. 26), and the Superannuation Act 1887 (50 & 51 Vict. c. 67). The provision as to the clerks is new.

The paid Commissioners.—See sec. 151, subs. (2), *ante*.

The secretary.—See sec. 154, *ante*.

Clerks.—See sec. 155, *ante*.

157. Every secretary or clerk shall, before he acts, make before any one of the Commissioners the declaration to be made by the secretary and clerks of the Commissioners set forth in the First Schedule. Secretary and clerks to make a declaration.

This section re-enacts sec. 12 of the Lunacy Act 1845 (8 & 9

Sec. 158 (1)-(3).

Vict. c. 100), except that a declaration is now, under the Promissory Oaths Act 1868 (31 & 32 Vict. c. 72), substituted for an oath.

Secretary.—See sec. 154, *ante.*

Clerk.—See sec. 155, *ante.*

Any one of the Commissioners.—Paid or unpaid.

The declaration . . . Schedule.—See *post.* As to declaration (*a*) by Commissioners, see sec. 151, subs. (5), *ante;* (*b*) by Master, see sec. 111, subs. (4), *ante.*

Disqualification of Commissioners and their secretary and clerks.

158. (1) A person shall not be qualified to be a Commissioner or secretary or clerk of the Commissioners if he is, or within one year prior to his appointment has been, interested in a licensed house.

This subsection follows the first clause of sec. 23 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Qualified.—As to qualification of medical and legal Commissioners, see sec. 151, subs. (2), *ante;* and of secretary, see sec. 154, subs. (5), *ante.* The only disqualifications upon clerks are imposed by this section. Paid Commissioners are subject to a further restriction, viz. that they are not to carry on any other profession or employment from which profit is derived (see sec. 150, subs. (3), *ante*). Any disqualified person continuing to act is guilty of a misdemeanour (subs. (3), *inf.*).

Disqualification of clerks.

Interest.

Interested in.—*Semble*, that any interest, direct or indirect, is a disqualification. In the corresponding restriction on Chancery Visitors the words *directly or indirectly* are used (see sec. 165, *post*).

Licensed house.—As to licensing of, see sec. 208, *post.*

(2) If any Commissioner or the secretary or any clerk of the Commissioners becomes interested in a licensed house, he shall be disqualified to hold his office.

This subsection re-enacts the third clause of section 23 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsection.

(Disqualified person acting guilty of misdemeanour.)

(3) Any disqualified person continuing to act shall be guilty of a misdemeanour.

This subsection is based on the fourth clause of sec. 23 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Disqualified person.—See subss. (1) and (2), *sup.*

Misdemeanour.—As to prosecutions for, see sec. 325, *post.*

Punishment of, see notes to sec. 7, subs. (4), *ante.*

Meetings and Procedure.

159. (1) The Commissioners, or some five of them, shall hold quarterly meetings at their office, or at such other place as the Lord Chancellor may direct, on the first Wednesday in the months of February, May, July, and November in every year, to receive applications for licences for houses for the reception of lunatics within the immediate jurisdiction of the Commissioners.

Commissioners to hold meetings for granting licences.

This subsection re-enacts the first clause of sec. 15 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The Commissioners.—Definition of, sec. 341, *post.*

Appointment, etc., of, secs. 150 and 151, *ante.*

Five.—Any five Commissioners, at a meeting specially summoned, may appoint a permanent chairman (see sec. 153, subs. (2), *ante*). As to procedure, if five Commissioners do not assemble, see subs. (2), *inf.*

Office.—The office of the Lunacy Commissioners is at 19 Whitehall Place, London, S.W.

The Lord Chancellor.—Definition of in sec. 12 of the Interpretation Act 1889 (52 & 53 Vict. c. 63), cited *ante* p. 198. The Commissioners may adjourn the original meeting to such place as they think fit (see subs. (3), *inf.*).

As to place for holding special meetings, see sec. 160, subs. (4).

Applications for licences.—See Rules of the Commissioners in Lunacy 1895, rr. 32 and 33, *post.*

Lunatics.—Definition of, sec. 341, *post.*

Immediate jurisdiction.—As to, see sec. 208, subs. (1), *post;* and Third Schedule, *post.*

(2) In case on any such occasion five Commissioners are not present, the meeting shall take place on the following Wednesday, and so on weekly until five Commissioners assemble.

(Where quorum not present.)

This subsection re-enacts the second clause of sec. 15 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsection.

(3) The Commissioners assembled at every such meeting shall have power to adjourn the meeting from time to time and to such place as they think fit.

(Adjournment of meeting.)

Sec. 160 (1), (2).

This subsection re-enacts the third clause of sec. 15 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsections.

Every such meeting.—See subss. (1) and (2), *sup.*

To such place.—Apparently the original meeting must be held at the Commissioners' Office, or "at such other place as the Lord Chancellor may direct" (see subs. (1)). As to special meetings, see sec. 160, subs. (4), *inf.*

(Applications for licences at other meetings.)

(4) Any five of the Commissioners may, at any other time, at a meeting duly summoned, receive applications for licences.

This subsection re-enacts the proviso to sec. 15 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsections.

A meeting duly summoned, i.e. by the secretary under sec. 160, *inf.*

Provision for calling meetings.

160. (1) If a Commissioner by writing under his hand requires the secretary to call a meeting of the Commissioners for a purpose specified in the writing, or for general business, the secretary shall call a meeting.

This subsection follows the first clause of sec. 16 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

A Commissioner.—Paid or unpaid. *Semble*, this section applies to meetings for the election of a permanent chairman (see sec. 153, subs. (2), *ante*).

The secretary.—See sec. 154, *ante.*

A meeting.—As to ordinary meetings of the Commissioners, see sec. 159, *ante.*

Purpose of meeting.

A purpose.—The meeting may be called for any special purpose, or for general business. The only purposes specifically provided for by the Act are the appointment of a permanent chairman (see sec. 153, subs. (2), *ante*), and applications for licences at other times than those of the ordinary quarterly meetings (see sec. 159, subs. (4), *sup.*). As to notice of meeting, see subs. (2), *inf.*; quorum, subs. (3), *inf.*; place of holding, subs. (4), *inf.*

(Notice of meeting.)

(2) The secretary shall give to the Commissioners, or such of them as are in England and have an address known to the secretary, twenty-four hours' notice of the place, day, and hour of the meeting, and of the purpose for which it is to be held.

Sec. 160 (3), (4).

This subsection re-enacts the first clause of sec. 16 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsection.

Twenty-four hours.—As to notice of meeting for purpose of making orders and rules, see sec. 161, subs. (2), *post*.

(Quorum.)

(3) Any three Commissioners assembled at a meeting shall be a quorum, and shall constitute a board, except where by this Act five Commissioners are required to be present at any meeting.

This subsection re-enacts the second clause of, and the first proviso to sec. 16 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsections.

Where five Commissioners are required.

Except . . . meeting.—Five Commissioners are required for the appointment of a permanent chairman (sec. 153, subs. (2), *ante*); to receive applications for licences (see sec. 159, *ante*), or for the purpose of making rules and regulations (see sec. 161, *inf.*).

(Meetings of Commissioners.)

(4) Every meeting shall, as far as circumstances admit, be held at the office of the Commission.

This subsection re-enacts the second proviso to sec. 16 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Every meeting.—The meetings summoned by the secretary under subs. (1), *sup.*, are here specially referred to. But the rule applies to the ordinary meetings also (see sec. 159, subs. (1), *ante*). The original quarterly meetings must be held at the office of the Commission, or "at such other place as the Lord Chancellor may direct" (sec. 159, subs. (1), *ante*), but may be adjourned to any other place if the Commissioners think fit (*ib.* subs. (3), *ante*). Apparently in the case of special meetings it rests with the secretary to the Lunacy Commissioners to fix the place of meeting (see subs. (2), *sup.*).

The office.—See note to sec. 159, subs. (1), *ante*.

Power to make orders and rules to regulate procedure.

161. (1) The Commissioners, or any five of them present at any quarterly or other meeting, may, by resolution sealed with their seal or entered in a book kept for the purpose and signed by five at least of the Commissioners present at the meeting, make orders and rules for regulating the duties of the Commissioners and of their secretary, clerks, and servants, and for the transaction of the business of the Commission.

Sec. 161 (1), (2).

This subsection re-enacts the first clause of section 70 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The Commissioners.—Definition of, sec. 341, *post.*

Any five, etc.—As to when the presence of five is necessary, see notes to sec. 160, subs. (3), *ante.*

Any quarterly.—See sec. 159, subs. (1), *ante.*

Or other meeting.—See sec. 159, subs. (4), sec. 160, subs. (1), *ante.*

Sealed with their seal.—As to when sealing is necessary, see sec. 152, subs. (1), *ante.*

Orders and rules.—See Rules of the Commissioners in Lunacy 1895, *post.*

(Notice of meeting to make rules.)

(2) The secretary shall give to each Commissioner, so far as circumstances admit, not less than seven days' notice of a meeting for the purpose of making orders or rules, and shall state in the notice the purpose of the meeting.

This subsection re-enacts the proviso to sec. 70 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Not less . . . rules.—As to notice of special meetings for other purposes, see sec. 160, subs. (2), *ante.*

Reports and Records.

Reports to be made to the Lord Chancellor. (Act of 1889, s. 74, subs. (1).)

162. (1) The Commissioners shall, at the expiration of every six months, report to the Lord Chancellor the number of visits they have made and the number of patients they have seen.

Half-yearly report.

This subsection re-enacts sec. 74, subs. (1) of the Lunacy Act 1889, which superseded sec. 88 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), as amended by sec. 32 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

The Commissioners.—Definition of, sec. 341, *post.*

Report.—As to annual report, see subs. (2), *inf.*

As to laying report before Parliament, see subs. (3), *inf.*

The Lord Chancellor.—See definition of in sec. 12 of the Interpretation Act 1889 (52 & 53 Vict. c. 63), cited *ante* p. 198.

The number of visits.—See secs. 187, 191, 198, 199, 203-206, subs. (2), *post.*

The number of patients.—Formerly a return had also to be made in the report of the number of miles travelled by the Commissioners, and the sums received for travelling expenses.

Sec. 162 (2), (3).

(Annual report. Act of 1889, s. 74, subs. (2).)

(2) They shall also in or before the month of June in every year make to the Lord Chancellor a report made up to the end of the preceding year of the condition of the institutions for lunatics, and other places visited by them, and of the care of the patients therein, with such other particulars as they think deserving notice.

This subsection re-enacts sec. 74, subs. (2) of the Lunacy Act 1889.

See notes to preceding subsection.

Institutions for lunatics.—Definition of, sec. 341, *post.*

Such other particulars.—See secs. 194, 196, 197, *post.*

(Copies of reports to be laid before Parliament. Act of 1889, s. 74, subs. (3).)

(3) They shall lay copies of the reports to be made under this section before Parliament within one month after the same have been made if Parliament is then sitting, and, if not, within twenty-one days after the commencement of the next session.

This subsection re-enacts sec. 74, subs. (3) of the Lunacy Act 1889.

See notes to preceding subsections.

Within one month.—The day of the making of the report is excluded from the computation.[1] "Month" means calendar month (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3).

Within twenty-one days.—See preceding note. "Days" means all days, Sundays, etc., included.

Part VI.

VISITORS OF LUNATICS.

The Chancery Visitors.

Appointment and qualification of Chancery Visitors.

163. (1) There shall continue to be medical and legal visitors of lunatics so found by inquisition, and they are in this Act referred to as the Chancery Visitors.

This subsection re-enacts the first clause of sec. 16 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Visitors of lunatics.—As to Chancery Visitors, see secs. 163-168;

[1] See *ante* p. 117.

Sec. 163 (1)-(3).

visiting committees of asylums, secs. 169-176; visitors of licensed houses, secs. 177-182.

Continue to be.—As to origin of office of medical and legal visitors, see *ante* p. 330. The words "there shall continue to be" would probably render any complete amalgamation of the Lunacy Offices impossible (in spite of sec. 337, *post*), without fresh legislation. The same words occur as regards the Masters in Lunacy (sec. 111, subs. (1)), and the Commissioners in Lunacy (sec. 150, subs. (1), *ante*).

Medical and legal visitors.—As to qualifications of, see subs. (2), *inf.*; clerks and officers of, subs. (3), *inf.*; salaries of, subs. (4), *inf.*; removal of, sec. 164, *post*; disqualification of, sec. 165, *post*.

There are at present one legal and two medical visitors.

Lunatics so found, etc.—As to inquisition, see secs. 90 *et seq.*, *ante*.

(2) The Lord Chancellor may, when a vacancy occurs in the office of medical visitor or legal visitor, appoint, by writing under his hand, a fit person, being a medical practitioner in actual practice, to succeed a medical visitor, and a fit person, being a barrister of not less than five years' standing, to succeed a legal visitor.

This subsection re-enacts in substance the third clause of sec. 16 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

See notes to preceding subsection.

Lord Chancellor.—See definition of in sec. 12 of the Interpretation Act 1889 (52 & 53 Vict. c. 63), cited *ante* p. 198.

May.—In the Act of 1853 the corresponding term was "shall." Possibly the contemplated amalgamation of the Lunacy Offices may account for the change (see sec. 337, *post*). But see note to "there shall continue to be," in subs. (1), *sup.*

A medical practitioner.—Definition of, sec. 341, *post*.

Actual practice.—See notes to sec. 151, subs. (2), *ante*.

A barrister.—There is no requirement that the barrister shall be in actual practice. *Aliter*, in case of legal Commissioner (sec. 151, subs. (2), *ante*). Neither the secretary to the Lunacy Commission (see sec. 154, subs. (5), *ante*) nor a Master (see sec. 111, subs. (3), *ante*) is required to be a *practising* barrister.

Five years' standing.—A minimum of ten years is required in case of a Master (sec. 111, subs. (3), *ante*), of five years in case of a legal Commissioner (sec. 151, subs. (2), *ante*), and of seven years in the case of the secretary to the Lunacy Commission (see sec. 154, subs. (5), *ante*).

(Clerks of Chancery Visitors.)

(3) The visitors shall have such clerks and officers as the Lord Chancellor may, with the concurrence of the Treasury as to number and salaries, determine.

Sec. 163 (4).

This subsection re-enacts the first clause of sec. 25 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86).

The visitors.—See notes to subss. (1) and (2), *sup.*

Clerks and officers.—As to salaries of, see subs. (4), *inf.* The office of secretary to the Chancery Visitors, which was for a time allowed to drop and the duties of which fell to the chief clerk, has recently been restored.

Lord Chancellor.—See note to subs. (2), *sup.* *Aliter*, in the case of the Lunacy Commissioners' secretary, who is appointed by the Commissioners, with the Lord Chancellor's approval (sec. 154, subs. (3), *ante*), and clerks, who are appointed by the Commissioners, with the sanction of the Treasury as to numbers (sec. 155, subs. (1), *ante*).

The appointments are made by the Lord Chancellor.

The Treasury.—See note to sec. 39, subs. (6), *ante.*

(Salaries of visitors, etc.)

(4) The salaries of the Chancery Visitors, their clerks and officers, and their expenses to the amount sanctioned by the Treasury, shall be paid out of moneys provided by Parliament.

This subsection is based upon sec. 13 of the Courts of Justice (Salaries and Funds) Act 1869 (32 & 33 Vict. c. 91), superseding sec. 25 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

The salaries of the Chancery Visitors.—These were fixed under sec. 24 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86), and still remain at £1500 a year.

As to the Chancery Visitors, see sec. 163, *sup.*

As to salaries of Masters, see sec. 111, subs. (6), *ante.*

As to salaries of paid Commissioners, see sec. 155, subs. (2), *ante.*

Their clerks and officers.—See subs. (3), *sup.*

Tenure of office of Chancery Visitors.

164. The Chancery Visitors may be removed by the Lord Chancellor in case of misconduct or neglect in the discharge of their duties, or of their being disabled from performing the same, and they shall not be engaged in the practice of their respective professions.

This section is based upon sec. 24 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86).

The Chancery Visitors.—See sec. 163, *ante.*

Removed.—As to removal of Commissioners, see sec. 151, subs. (1), *ante.*

The Lord Chancellor.—See definition of in sec. 12 of the Interpretation Act 1889 (52 & 53 Vict. c. 63), cited *ante* p. 198.

Their duties.—As to duties of, see sec. 183 *et seq.*, *post.*

Sec. 165.

Disabled.

Disabled.—Whether by illness or by disqualification under sec. 165, *post*.

As to appointment of substitute for visitor temporarily disabled, see sec. 168, *post*.

Not to be engaged in practice.

They shall not be engaged.—There is a wider disqualification in the case of a paid Commissioner, see sec. 150, subs. (3), *ante*, "any profession or employment from which any profit is derived." See further disqualifications in sec. 165, *inf*.

Visitors not to be interested in licensed houses.

165. A person shall not be appointed a Chancery Visitor if he is or has been within the two years preceding his appointment directly or indirectly interested in any licensed house; and if any person after his appointment becomes so interested, his appointment shall become void, and thereupon his salary shall cease.

This section re-enacts in substance sec. 18 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

A person . . . Chancery Visitor.—As to appointment of, see sec. 163, *ante*. As to tenure of office by, sec. 164, *post*.

Interest, nature of.

If he is . . . interested.—The corresponding words in sec. 18 of the Lunacy Regulation Act 1853 were "interested in the keeping" of a licensed house. The words in the present section are wider, and it is conceived that they strike at any kind of interest, direct or indirect, in the management *or success* of a licensed house. The question might arise, for instance, whether a medical practitioner, who had within two years preceding his application for the office of Chancery Visitor been the consulting physician to a licensed house at a fixed salary, was disqualified. It might be plausibly argued (1) that he had no direct interest, inasmuch as his salary was not dependent on the number of patients; and (2) that his indirect interest, viz. the possibility of his salary being increased if the house flourished, diminished if the numbers of the patients decreased, and disappearing altogether if it were closed, was of too remote a character to operate as a disqualification, all the more so because the statute requires (see sec. 163, subs. (2), *ante*) "a fit person" to be appointed, and therefore could not have intended to limit unnecessarily the range of the experience from which fitness is derived. This argument would apply with still greater force in the conceivable case of a barrister who had within the statutory period held a retainer on behalf of the proprietor of a licensed house. It is submitted, however, that there would be a disqualification in either case.

Void.—As to tenure of office of Chancery Visitor, see sec. 164, *ante*.

His salary.—As to salary of Chancery Visitor, see sec. 163, subs. (4) *ante*.

166. The Masters for the time being shall by virtue of their office be visitors of lunatics so found by inquisition, jointly with the Chancery Visitors.

Masters to be *ex officio* visitors.

This section re-enacts sec. 17 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

It was suggested to the Select Committee of 1859 that the Masters should be *ex officio* Commissioners in Lunacy, and that both should meet on the Board (Ans. 3181). But the idea did not meet with favour.

The Masters.—Definition of, sec. 341, *post.*

Appointment of, sec. 111, *ante.*

Judicial duties of, secs. 90 and 116, *ante.*

Lunatics . . . inquisition.—See sec. 90, *ante.*

Jointly with.—They form a board for the purpose, see sec. 167.

The Chancery Visitors.—See sec. 163, *ante.*

167. (1) The Chancery Visitors and the Masters, or so many of them, not being less than three in number, as may from time to time be able, consistently with the discharge of their other duties, to attend, shall from time to time form themselves into a board for their mutual guidance and direction on matters connected with the visiting of lunatics.

The Visitors and Masters to form a board.

This subsection re-enacts the first clause of sec. 20 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

See notes to preceding section.

A board.—As to power of Lord Chancellor to amalgamate the Lunacy Departments, see sec. 337, *post.*

Their mutual guidance.—Each visitor remains, however, individually responsible to the Lord Chancellor.

The visiting of lunatics, i.e. of Chancery lunatics. As to visitation of, see sec. 183, *post.*

(2) The board may report to the Lord Chancellor upon any matter connected with the duties of the Chancery Visitors or of the board, as they think proper.

(Reports to Lord Chancellor by.)

This subsection re-enacts the second clause of sec. 20 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

The board.—See subs. (1), *sup.*

Report.—As to reports by Chancery Visitors, see sec. 185, *post.* See note to "their mutual guidance" in subs. (1), *sup.*

The duties, etc.—See sec. 183, *post.*

Or of the board.—As to duties of the Board, see subs. (1), *sup.*

Sec. 168 (1), (2).

Medical or legal visitor may appoint a substitute.

168. (1) Where a medical or a legal Chancery Visitor is temporarily prevented from discharging his duty by illness or unavoidable absence, but not otherwise, he may, with the approbation of the Lord Chancellor, appoint a medical practitioner in actual practice, or a barrister of not less than five years' standing (as the case may require), to act in his stead during his illness or unavoidable absence.

This subsection re-enacts the first clause of sec. 21 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

A medical.—As to medical Chancery Visitor, see sec. 163, subs. (2), *ante*.

As to legal Chancery Visitor, see sec. 163, subs. (2), *ante*.

Temporarily . . . otherwise.—A Chancery Visitor may be removed by the Lord Chancellor if he is disabled from performing his duties, sec. 164, *ante*.

Lord Chancellor.—See definition of in sec. 12 of the Interpretation Act 1889 (52 & 53 Vict. c. 63), cited *ante* p. 198.

Medical practitioner.—Definition of, sec. 341, *post*.

Actual practice.

Actual practice.—As to what is actual practice, see note to "practising barrister" in sec. 151, subs. (2), *ante*. "Actual practice" is a requirement in the appointment of a medical, but not of a legal, visitor (sec. 163, subs. (2), *ante*), and in that of a legal but not of a medical commissioner (sec. 151, subs. (2), *ante*). It is not prescribed in the case of a Master (sec. 111, subs. (3), *ante*), or of the secretary to the Commissioners in Lunacy (sec. 154, subs. (5), *ante*).

A barrister . . . standing.—This is the qualification for a legal visitor (see sec. 163, subs. (2)).

Act in his stead.—The Commissioners in Lunacy did not possess a similar power till the passing of the Act of 1889. See now sec. 151, subs. (3), *ante*. As to powers of substitute, see subs. (2), *inf*.

(How long appointment remains in force.)

(2) The medical practitioner or the barrister so appointed shall, while his appointment remains in force, have, perform, and execute all the powers, duties, and authorities belonging to the office of medical or legal visitor (as the case may be) with full validity and effect to all intents and purposes.

This subsection re-enacts the second clause of sec. 21 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

See notes to preceding subsection.

While his appointment remains in force, i.e. till the recovery or return of the visitor, or the removal of the substitute by the Lord Chancellor if he think fit under sec. 164, *ante*. Query whether in such a case of removal the Lord Chancellor could appoint a substitute under sec. 163, subs. (2), *ante*, or would require the visitor, if still disabled, to submit the name of another substitute for approbation under subs. (1) of this section. It is conceived that the latter course would alone be open to the Lord Chancellor. Subs. (2) of sec. 163, *ante*, applies only "when a vacancy occurs."

Query whether substitute debarred from practice.

All the powers . . . purposes.—As to duties of Chancery Visitors, see sec. 183, *post*. *Semble*, that the substitutes would not be required not to engage in the practice of their respective professions while they were acting temporarily as visitors, but that it would be sufficient if they did not allow their private practice to interfere with their duties as visitors.

Visiting Committees of Asylums.

Constitution of visiting committee.

169. (1) For every asylum there shall be a visiting committee appointed annually by the local authority, consisting of not less than seven members.

This subsection is based on sec. 22 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Asylum.—Definition of, sec. 341, *post*.

Visiting committee.—Definition of, sec. 341, *post*.

Local authority.—Definition of, sec. 240, *post*.

(Committee of district asylum.)

(2) The visiting committee of a district asylum shall be constituted of the number of members fixed by the agreement under which the asylum is provided.

This subsection is taken from the last part of the proviso to sec. 22 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See notes to preceding subsections.

District asylum.—Definition of, sec. 341, *post*.

The agreement . . . provided.—As to such agreements, see sec. 242, *post*, and secs. 248-253, *post*.

(Where more than one asylum.)

(3) Where there is more than one asylum, the local authority may appoint one committee for the management and control of all the asylums, and such committee shall appoint a sub-committee for each separate asylum,

Sec. 169 (4), (5).

and may delegate to that sub-committee such powers and duties as the committee from time to time think fit.

This subsection re-enacts sec. 86, subs. (6) of the Local Government Act 1888 (51 & 52 Vict. c. 41).

See notes to preceding subsections.

As to position of sub-committee acting under statutory powers, see *Cook* v. *Ward*,[1] and *Huth* v. *Clarke*.[2]

(Where county borough has contributed to county asylum.)

(4) Where a county borough has contributed towards the cost of any county asylum, the council of the borough may, if they so desire, appoint to be members of the visiting committee of the asylum such number of members of the council as may be agreed upon, or in default of agreement be determined by the Commissioners under the Local Government Act 1888, or after they have ceased to hold office, by arbitration under that Act. Such appointment shall be in substitution for any appointment previously made on the part of the borough.

51 & 52 Vict. c. 41.

This subsection re-enacts the second part of the first sentence in sec. 32, subs. (3) (*c*) of the Local Government Act 1888 (51 & 52 Vict. c. 41).

See notes to preceding subsections.

County borough.—Definition of, sec. 341, *post*.

Has contributed.—As to arrangements for such contributions, see sec. 244, *post*.

The Commissioners . . . 1888.—The powers of the Commissioners ceased on 31st December 1890, in accordance with sec. 61, subs. (10) of the Local Government Act 1888 (51 & 52 Vict. c. 41).

Arbitration.—See sec. 62 of the Local Government Act 1888.

(Where borough has contributed towards cost of county asylum.)

(5) Where a borough, not being a county borough, has contributed towards the cost of any county asylum, and the representatives of the borough on the county council are not entitled to vote for the appointment by the council of visitors of the asylum, the council of the borough may appoint two persons to be members of the committee.

[1] 1877, 2 C.P.D. 255. [2] 1890, 25 Q.B.D. 391.

Sec. 169 (6).

This subsection is based upon sec. 86, subs. (3) (*b*) of the Local Government Act 1888 (51 & 52 Vict. c. 41).

See notes to subss. (1)-(4), *sup.*

Has contributed.—As to such boroughs, see sec. 243, *post.*

Are not entitled to vote.—They will not be entitled to vote if the borough is not assessed to county contributions in respect of lunatic asylums. See sec. 35, subs. (6) of the Local Government Act 1888.

(Appointments during continuance of contracts for reception of pauper lunatics.)

(6) During the continuance of a contract for the reception of the pauper lunatics of a county borough or borough specified in the Fourth Schedule into a county asylum, the council of the borough shall appoint a visiting committee to visit the lunatics sent from such county borough or borough in the asylum.

This subsection re-enacts the first part of the third clause of sec. 7 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

See notes to subss. (1)-(5), *sup.*

Right to appoint expires on determination of contract.

During the continuance.—On the determination of the contract the right of the council to appoint a visiting committee ceases, unless the case comes under subs. (5), *sup.*

A contract, etc.—As to such contracts, see secs. 243 and 269, *post.*

Fourth Schedule.—See *post.*

Visiting committee.—As to duties of, see sec. 189, *post.*

Mode of election of visiting committee.

170. Unless some other day is appointed by the standing orders of the local authority, the visiting committee shall be appointed at the quarterly meeting of the local authority in November.

This section supersedes the first clause of sec. 22 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as affected by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Local authority.—Definition of, sec. 240, *post.*

Visiting committee.—Definition of, sec. 341, *post;* and see sec. 169, *ante.*

Quarterly meeting.

The quarterly meeting.—See sec. 75, subs. (13) of the Local Government Act 1888 (51 & 52 Vict. c. 41), and r. 2 of the Second Schedule to the Municipal Corporations Act 1882 (45 & 46 Vict. c. 50), under which the meeting must still be held subject to the standing orders of the local authority.

Vacancies to be filled up.

171. (1) If a visitor dies or resigns, or becomes incapable or disqualified to act, the authority by whom he was

Sec. 171 (1), (2).

appointed shall, as soon as possible, appoint in his place some qualified person, and the new appointment shall be made in the same manner as the annual election of visitors.

This subsection re-enacts the first clause of sec. 28 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

A visitor.—See sec. 169, *ante.*

Disqualified.—As to disqualifications of visitors, see sec. 174, *post.*

The authority, etc.—As to authority by whom visitors are appointed, see sec. 169, *ante.*

As soon as possible.—The continuing members may act notwithstanding any vacancy in the body (subs. (2), *inf.*).

The annual election.—See sec. 169, subs. (1), *ante.*

(Continuing members may act during vacancy.)

(2) The continuing members of a visiting committee may act notwithstanding any vacancy in the body.

This subsection re-enacts the third clause of sec. 28 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See notes to preceding subsection.

Visiting committee.—Definition of, sec. 341, *post.*

Appointment of, sec. 169, *ante.*

Duration of office.

172. (1) A visiting committee shall hold office until the first meeting of their successors.

This subsection re-enacts in substance the first clause of sec. 27 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Visiting committee.—Definition of, sec. 341, *post.*

Annual appointment of, secs. 169 and 170, *ante.*

Contracts by old committee.

Shall hold office till, etc.—The old committee can therefore, until the first meeting of their successors, enter into any competent contract, and such contract will be binding on the new committee.

(Default in electing.)

(2) If default is made in electing a visiting committee, the visiting committee last elected shall continue in office as if they had been duly re-elected.

This subsection consolidates and re-enacts the second clause of sec. 27 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

See preceding subsection and notes.

Examination of accounts.

173. The visiting committee of every asylum shall, previously to the month of June in every year, examine

the accounts of the treasurer and clerk of the asylum, and shall report the same to the next meeting of the local authority, or of each local authority to whom the asylum wholly or in part belongs. Sec. 173.

This section re-enacts in substance sec. 60 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Visiting committee.—Definition of, sec. 341, *post.*

Appointment of, secs. 169 and 170, *ante.*

Asylum.—Definition of, sec. 341, *post.*

June.—The date under the Act of 1853 (*v. sup.*) was March.

The accounts.—As to these, see secs. 278, 279, *post.*

Treasurer.—As to appointment and duties of, see sec. 276, subs. (1) (*e*), and sec. 278, subs. (6), *post.*

Clerk.—As to appointment and duties of, see secs. 276, subs. (1) (*d*), and sec. 278, subs. (1), *post.*

The local authority.—Definition of, sec. 240, *post.*

174. (1) A member of a visiting committee shall not be interested either in his own name or in the name of any other person in any contract entered into or work done for the committee, and shall not derive any profit or emolument whatsoever from the funds of the asylum. Members of visiting committee not to be interested.

This subsection follows the first clause of sec. 44 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Visiting committee.—Definition of, sec. 341, *post.*

Interested.—The words "directly or indirectly" occur in the corresponding provision as to Chancery Visitors, see sec. 165, *ante.* The scope of this subsection is limited by subs. (2), *inf.* Interested.

Contract entered into.—See secs. 254-266, *post.*

(2) This provision shall not extend to any interest which a member of a visiting committee may have by reason of his being a shareholder of a company which has entered into any contract with or done any work for the visiting committee, but he shall not be entitled to vote in respect of such contract or work. (Limitation of scope of section.)

This subsection follows the first proviso to sec. 44 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See notes to preceding subsection.

Sec. 175 (1), (2).

Any interest.—See subs. (1), *sup.*

He shall not be entitled . . . work.—There is no clause corresponding to this in sec. 44 of the Act of 1853 (*v. sup.*). Nor is there in the present Act any provision corresponding to the second proviso in that section, that "no contract or dealing between such company and the visitors of such asylum should be at or upon rates or terms more advantageous to such company than in the case of contracts or dealings by such company with other parties."

Vote.—As to meetings of visiting committee, see sec. 175, *inf.*

Meetings of visiting committee.

175. (1) The provisions of section eighty-two of the Local Government Act 1888 with respect to the proceedings of committees of county councils shall apply to the proceedings of every visiting committee appointed wholly or partly by a county council, and the chairman of such committee may be elected accordingly.

This subsection is based on sec. 86, subs. (8) of the Local Government Act 1888 (51 & 52 Vict. c. 41).

The provisions.—The material provisions in sec. 82 are as follow :—

Visiting committees appointed by county council.

Local Government Act 1888, sec. 82.

(1) A county council appointing under this Act any committee may from time to time make, vary, and revoke regulations respecting the quorum and proceedings of such committee, and as to the area (if any) within which it is to exercise its authority; and subject to such regulations the proceedings and quorum and place of meeting, whether within or without the county, shall be such as the committee may from time to time direct, and the chairman at any meeting of the committee shall have a second or casting vote.

(2) Every committee shall report its proceedings to the council by whom it was appointed, but to the extent to which the council so direct, the acts and proceedings of the committee shall not be required, by the provisions of the Municipal Corporations Act 1882, to be submitted to the council for their approval.

(3) In the case of a joint committee the councils [and courts] appointing the joint committee shall jointly have the powers given by this section, and the provisions of this section shall apply accordingly.

Sec. 22 of the Municipal Corporations Act 1882 (45 & 46 Vict. c. 50) also applies to visiting committees appointed by a county council.

Every visiting committee, etc.—See sec. 169, subss. (4) and (5), *ante.*

As to position of other visiting committees, see subs. (2), *inf.*

(Provisions applicable to other visiting committees.)

(2) To other visiting committees the following provisions shall apply :

(*a*) The members of the committee shall within one

Sec. 175 (2).

month after their election meet at some convenient place, to be named in a notice in writing given by two or more of such members, or by the clerk of the outgoing committee by the direction of two or more of such members;

(*b*) Notices of meetings shall be given to each member personally, or left at his place of abode, or sent by post seven days at least before the time appointed for the meeting;

(*c*) The members shall at the first meeting elect one of their number to be chairman of the committee;

(*d*) The chairman shall preside at all meetings at which he is present. In case of his absence from any meeting the members present shall elect one of their number to be chairman of the meeting;

(*e*) Any meeting may be adjourned from time to time and from place to place;

(*f*) The committee shall meet as often as they may think fit;

(*g*) A meeting may be adjourned by two members; for all other purposes three members shall be a quorum;

(*h*) Every question shall be decided by a majority of the votes of the members present, and in the event of an equality of votes the chairman shall have a second or casting vote;

(*i*) The clerk of the committee shall, whenever required in writing by the chairman or any two members of the committee, or by the manager of the asylum, and the chairman may, whenever he thinks fit, summon a meeting of the committee.

This subsection consolidates and re-enacts secs. 24 and 25 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See notes to preceding subsection.

Sec. 176 (1), (2).

Within one month.—The date, *i.e.* day of the date of the election, is excluded from the computation. See *ante* p. 117. "Month" means calendar month (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3).

Seven days at least.—"Days" means clear days. Sundays, etc., are included. As to "clear days," see *ante* p. 178.

The clerk of the committee.—As to appointment and duties of, see sec. 176.

Manager of the asylum.—See definition of, sec. 341, *post.*

Clerk to visiting committees.

176. (1) Every visiting committee shall appoint a clerk (who may also be the clerk to the asylum) at such salary as the committee think fit, and a clerk so appointed may be discharged, and in the event of a vacancy in the office a new clerk may be appointed. The clerk to the visiting committee shall, unless he be sooner discharged, continue in office so long as the committee continue in office.

This subsection is based on sec. 26 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Visiting committee.—Definition of, sec. 341, *post*; and as to visiting committees of asylums, see sec. 169, *ante.*

Appointment, etc., of, sec. 169, *ante.*

Clerk to the asylum.—As to appointment of, see sec. 276, subs. (1) (*d*), *post.*

A new clerk may.—In the corresponding section in the Act of 1853 (*v. sup.*) the word "shall" was used.

So long as, etc.—As to duration of office of committee, see sec. 172, subs. (1), *ante.*

(Action by or against visiting committees.)

(2) A visiting committee may sue and be sued in the name of their clerk, and an action by or against a visiting committee shall not abate by the death or removal of the clerk, but the clerk for the time being shall always be deemed the plaintiff or defendant in the action.

This subsection re-enacts sec. 125 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Visiting committee.—Definition of, sec. 341, *post.*

Sue and be sued.—See *Kendall* v. *King*, 1856, 17 C. B. 483; *Devenish* v. *Brown*, 1857, 26 L.J., N.S., Ch. 23.

Removal.—As to discharge of clerk, see subs. (1), *sup.*

The clerk for the time being.—As to appointment of clerk to fill vacancy, see subs. (1), *sup.*

Visitors of Licensed Houses.

Justices to appoint visitors.

177. (1) The justices of every county and quarter sessions borough not within the immediate jurisdiction of the Commissioners shall, whether there is a licensed house within the county or borough or not, annually appoint three or more justices, and also one medical practitioner, or more, to act as visitors of licensed houses within the county or borough and otherwise for the purposes of this Act.

This subsection re-enacts in substance the second clause of sec. 17 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and sec. 57, subs. (1) of the Lunacy Act 1889.

Justices.—Definition of, sec. 341, *post.*

County.—Definition of, sec. 341, *post.*

Quarter sessions borough.—Definition of, sec. 341, *post.* An appointment by the justices of the borough requires the written consent of the recorder of the borough (sec. 180, *post*).

The immediate jurisdiction.—As to immediate jurisdiction of Commissioners, see sec. 208, subs. (1), *post.*

The Commissioners.—Definition of, sec. 341, *post.*

Appointment, etc., of, sec. 150, *ante.*

Visitation by, see sec. 187, *post.*

Services of visitors where no licensed house.

Whether there is a licensed house . . . or not.—This clause is taken from the Act of 1889, sec. 57, subs. (1). The services of visitors may be necessary although there is no licensed house in the county or borough, to visit single patients under sec. 39, *ante.* The appointment of a clerk is not compulsory, for under sec. 178, subs. (1), *post*, the clerk of the peace is to act as visitors' clerk in default of such appointment.

As to licensing of houses, see sec. 207, *post.*

Annually.—See subss. (7) and (8), *post.*

Three or more.—There is apparently nothing to prevent all the justices being appointed, subject to the consent of the recorder (sec. 180, *post*).

Medical practitioner.—Definition of, sec. 341, *post.*

As to remuneration of, see subs. (12), *post.*

And otherwise.—See notes to "whether there is," etc., *sup.*

(Declaration by visitors.

(2) The visitors shall at their first meeting make before a justice the declaration required by this Act to be made by a Commissioner, with the necessary modification.

This subsection re-enacts in substance the third clause of sec. 17 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Sec. 177 (3)-(5).

See notes to preceding subsection.

At their first meeting.—Query whether the visitors are obliged to meet where there is no licensed house, unless other duties, *e.g.* that of visitation under sec. 39, *ante*, are imposed on them.

Declaration by Commissioners.

The declaration . . . Commissioners.—As to this declaration, see sec. 151, subs. (5), *ante*, and First Schedule, *post*. The provision as to the declaration is in accordance with the Promissory Oaths Act 1868 (31 & 32 Vict. c. 72), which substitutes a declaration for an oath in all cases.

Necessary modification.

The necessary modification.—Viz. instead of the words "as one of the Commissioners in Lunacy" in the Commissioners' declaration, use the words "as one of the visitors of licensed houses within the county (or borough) of ——"

(3) A person shall not be qualified to be a visitor or clerk, or assistant clerk to any visitor, who is or within one year prior to his appointment has been interested in a licensed house.

This subsection follows the first clause of sec. 23 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Qualified.—As to loss of qualification, see subs. (4), *inf.*

As to penalty on disqualified person acting, see subs. (5), *inf.*

As to filling up vacancy by disqualification, see subs. (6), *inf.*

A visitor.—See subs. (1), *sup.*

Clerk.—As to appointment of, see sec. 178, *post.*

Assistant clerk.—As to appointment of, see sec. 179, *post.*

Any visitor.—This is obviously a misprint for "any visitors."

Interested.—In regard to the Chancery Visitors, the words "directly or indirectly" are used, see sec. 165, *ante.*

As to disqualification of visiting committee, see sec. 174, subs. (1), *ante.*

A licensed house.—See sec. 207, *post.*

(4) If a visitor or a clerk or assistant clerk to any visitors becomes interested in a licensed house he shall be disqualified to hold his office.

This subsection follows the third clause of sec. 23 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsections.

(5) Any disqualified person continuing to act shall be guilty of a misdemeanour.

This subsection follows the fourth clause of sec. 23 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to subs. (3), *sup.*

Guilty of a misdemeanour.—As to prosecution for, see secs. 325, 328, *post.* As to punishment of, see note to sec. 7, subs. (4), *ante.*

(6) In case of the death, inability, disqualification, resignation, or refusal to act of any visitor, the justices of the county or borough may appoint a visitor in his place.

This subsection re-enacts sec. 18 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Disqualification.—See subss. (3) and (4), *sup.*

Justices.—Definition of, sec. 341, *post.*

County.—Definition of, sec. 341, *post.*

Borough.—Definition of, sec. 341, *post.*

May appoint.—In boroughs the consent in writing of the recorder is necessary (see sec. 180, *post*). The appointment may be made at special sessions meeting at the same time as any quarter sessions (subs. (7), *inf.*).

(Special sessions.)

(7) The annual appointment of visitors shall be made by justices of a county at their Michaelmas quarter sessions, and by justices of a borough at special sessions, to be held in the month of October; other appointments may be made by justices of a county at any quarter sessions and by justices of a borough at special sessions to be held at the same time as any quarter sessions.

This subsection is taken from secs. 17 and 115 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsections.

The annual appointment.—See subs. (1), *ante.*

Special sessions . . . October.—These may be commenced at any time within that month which may be appointed by any two justices of the borough sitting at an ordinary petty sessions, and the clerk to the justices should serve notices of the appointed day on all the justices on the commission.

Other appointments, e.g. in cases of death, disqualification, etc., of a visitor, see subs. (6), *sup.*

(Act of 1889, s. 57, subs. (2).)

(8) In any county or borough in which no appointment of visitors has been made before the commencement of this Act the first appointment shall be made, in the case of a county, at the quarter sessions next after the

Sec. 177 (9), (10).

commencement of this Act, and in the case of a borough, at special sessions to be held at the same time as the next quarter sessions.

This subsection re-enacts sec. 57, subs. (2) of the Lunacy Act 1889.
County.—Definition of, sec. 341, *post.*
Borough.—Definition of, sec. 341, *post.*
Appointment of visitors.—See subss. (1) and (7), *sup.*
The commencement, etc.—Viz. on 1st May 1890, see sec. 3, *ante.*

(Notification as to visitors.)

(9) The clerk to the justices of a quarter sessions borough shall forthwith notify to the clerk of the peace of the borough the names, places of abode, and occupations or professions of all visitors appointed by the justices.

This subsection is new.
See notes to preceding subsections.

Duty of clerk to attend sessions.

Clerk . . . borough.—Definition of quarter sessions borough, sec. 341, *post.* It appears from this section that it is the duty of the clerk to the justices to attend and act at special sessions for the appointment of visitors.

Forthwith notify.—As to duty of same official to notify appointment of justices to be judicial authority in borough, see sec. 10, subs. (6), *ante.*

Clerk of the peace.—As to duty in respect of notice, see subs. (10), *inf.*

(List of names, etc., of visitors.)

(10) A list of the names, places of abode, and occupations, or professions of all visitors of licensed houses shall, within fourteen days from the date of their appointment, be published by the clerk of the peace of the county or borough for which they are appointed in a local newspaper, and shall, within three days from the date of their appointment, be sent by the clerk of the peace to the Commissioners.

This subsection re-enacts the first clause of sec. 19 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Shall, etc.—As to penalty for default, see subs. (11), *inf.*

As to duty of clerk of the peace in relation to appointment of clerk to visitors, see sec. 178, subs. (3), *post.*

"Within 14 days."

Within fourteen days.—"Days" means all days, the day of the date of the appointment excluded (see *ante* p. 117).

Within three days.—See note to "within fourteen days," *sup.*

The date of their appointment.—See subss. (7) and (8), *ante.*
The Commissioners.—Definition of, sec. 341, *post.*
Appointment, etc., of, see sec. 150, *ante.*

(11) Every clerk of the peace making default in publishing and sending to the Commissioners the list of visitors within the time hereby limited, shall for every default be liable to a penalty not exceeding two pounds. (Penalty for default.)

This subsection re-enacts the second clause of sec. 19 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).
See notes to preceding subsections.
Liable, etc.—As to recovery of such penalties, see sec. 326, *post.*

(12) Every visitor, being a medical practitioner, shall be entitled to such remuneration for services rendered under this Act as the justices of the county or borough may approve. (Remuneration of medical visitor.)

This subsection re-enacts sec. 20 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and the first part of sec. 57, subs. (3) of the Lunacy Act 1889.
Visitor.—As to remuneration of clerk, see sec. 178, subs. (5), *post.*
A medical practitioner.—See subs. (1), *ante.*
Definition of, sec. 341, *post.*
Such remuneration, etc.—As to funds out of which remuneration is payable, see sec. 225, *post.* As to payment of expenses of other visitors, see sec. 182, *post.*
Services rendered.—It would seem from these words that the remuneration would depend upon duties actually performed. *Aliter*, in the case of the clerk, who may receive remuneration or salary (see sec. 178, subs (5), *post*). "Services rendered."

178. (1) The clerk of the peace or some other person to be appointed by the justices for the county or borough shall act as clerk to the visitors. Clerk to visitors; his duties and remuneration.

This subsection re-enacts the first clause of sec. 21 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).
Justices.—Definition of, sec. 341, *post.*
County.—Definition of, sec. 341, *post.*
Clerk to the visitors.—The appointment of a clerk to the visitors by the justices of a borough requires the consent in writing of the recorder of the borough (see sec. 180, *post*). As to the visitors, see Clerk to visitors.

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subs. (1), *ante*. As to disqualification of clerk, see sec. 177, subss. (3) and (4), *ante*. As to declaration by, see subs. (2), *inf.*; and remuneration of, see subs. (5), *inf.*

(Declaration by clerk to visitors.)

(2) The clerk to the visitors shall, at the first meeting of the visitors, make the declaration required by this Act to be made by the secretary of the Commissioners, with the necessary modification, such declaration to be made before one of the visitors, being a justice.

This subsection re-enacts in substance the third clause of sec. 21 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See subs. (2) of sec. 177, *ante*.

The clerk to the visitors.—See subs. (1), *sup.*

At the first meeting.—See sec. 177, subs. (2), *ante*.

The declaration.—A declaration was substituted in all cases for an oath by the Promissory Oaths Act 1868 (31 & 32 Vict. c. 72).

Required . . . Commissioners.—As to declaration by secretary to Commissioners, see sec. 157, *ante*; and First Schedule, *post*.

'Necessary modification."

The necessary modification.—Viz. instead of the words "secretary of the Commissioners in Lunacy," the words "clerk to the visitors of licensed houses for the county (or borough) of ——"

Being a justice.—All the visitors, except the medical practitioner, are required to be justices, see sec. 177, subs. (1), *ante*.

(3) The name, place of abode, occupation, and profession of the clerk to the visitors (whether he is the clerk of the peace or any other person), shall within fourteen days after the appointment be published by the clerk of the peace for the county or borough in some local newspaper, and shall within three days from the date of the appointment be communicated by the said clerk of the peace to the Commissioners.

This subsection re-enacts the fourth clause of sec. 21 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to sec. 177, subs. (10), *ante*.

Within three days.—"Days" means all days. The day of the date of the appointment is excluded (see *ante* p. 117).

(Default by clerk of peace.)

(4) Every clerk of the peace making default in either of the respects aforesaid shall for every such default be liable to a penalty not exceeding two pounds.

This subsection re-enacts the fifth clause of sec. 21 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The respects aforesaid.—See subs. (3), *sup.*

Liable to be.—As to recovery of penalty, see sec. 326, *post.*

(5) Every clerk to the visitors shall be allowed such salary or remuneration for his services as the justices for the county or borough direct. (Remuneration of clerk to visitors.)

This subsection re-enacts the last clause of sec. 21 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Clerk to the visitors.—See subs. (1), *ante.*

Such salary or remuneration.—As to fund out of which it is paid, see sec. 225, *post.* As to remuneration of medical practitioner acting as visitor, see sec. 177, subs. (12), *ante.*

179. (1) If the clerk to any visitors at any time desires to employ an assistant in the execution of the duties of his office, he shall certify his desire and the name of the assistant to one of the visitors, being a justice. Provision for assistants to the clerk of the visitors.

This subsection re-enacts the first clause of sec. 22 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Assistant.—As to disqualifications for the office, see sec. 177, subss. (3), (4), *ante.*

As to declaration by, see subs. (2).

As to remuneration of, see subs. (3).

Being a justice.—See note to sec. 178, subs. (2), *ante.*

(2) If the visitor approves of the assistant, the assistant shall make before the visitor the declaration to be made by assistants to the clerk to the visitors in the First Schedule. (Declaration by assistant.)

This subsection re-enacts in substance the second clause of sec. 22 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsection.

The declaration.—See form of in First Schedule, *post.*

As to declaration by visitors of licensed houses, see sec. 177, subs. (2).

As to declaration by clerk to visitors of licensed houses, see sec. 178, subs. (2).

Sec. 179 (3).

(Cost of employing assistant.)

(3) Thereafter the clerk may, at his own cost, employ the assistant.

This subsection re-enacts the last sentence of sec. 22 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsections.

At his own cost.—As to remuneration of clerk, see sec. 178, subs. (5), *ante*.

Consent of recorder.

180. A visitor or clerk shall not be appointed by the justices of a borough without the consent in writing of the recorder of the borough.

This section follows sec. 31 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

A visitor.—As to appointment of by borough justices, see sec. 177, subss. (1), (7), (8).

Query whether recorder may attend special sessions as justice.

Clerk.—The term does not include assistant clerk, see sec. 179, *sup.* Under sec. 163 of the Municipal Corporations Act 1882, the recorder is a justice of the peace *ex officio*. *Semble*, he may attend the special sessions as a justice.

Meetings of visitors.

181. (1) The visitors shall meet at such times and places as they may think proper.

This subsection is based on sec. 21 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The visitors.—See sec. 177, subs. (1), *ante*.

Where and when held.

Meet . . . proper.—Under sec. 21 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), the justices fixed the time and place of meeting. Query whether visitors are required to meet where there is no licensed house in the borough, and no other duties, *e.g.* that of visitation under sec. 39, *ante*, are imposed on them.

(Summoned by clerk. Act of 1889, s.57, subs.(5).)

(2) The clerk to the visitors shall, upon the direction of any two visitors, call a meeting of the visitors at such time and place as the two visitors may appoint.

This subsection re-enacts sec. 57, subs. (5) of the Lunacy Act 1889.

Clerk.—See as to, sec. 178, *ante*.

(Secrecy of meetings.)

(3) The times and places of meetings shall be kept secret, and each meeting shall be held privately and so that no manager or person interested in or employed about or connected with any house to be visited shall have notice of any intended visit.

Sec. 183 (1).

This subsection re-enacts the second clause of sec. 21 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Manager.—Definition of, sec. 341, *post.*

Interested in.—Directly or indirectly. See sec. 177, subs. (3), *ante.*

Payment of expenses of visitors of licensed houses.

182. The expenses incurred by or under the order of any visitors of licensed houses in proceedings under this Act shall be paid out of the county or borough fund.

This section re-enacts the second clause of sec. 109 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Proceedings, etc.—See sec. 325, *post.*

Part VII.

VISITATION.

Duties of Chancery Visitors.

Duties of Chancery Visitors.

183. (1) The Chancery Visitors shall visit lunatics so found by inquisition at such times, and in such rotation and manner, and make such inquiries and investigations as to their care and treatment and mental and bodily health, and the arrangements for their maintenance and comfort, and otherwise respecting them, as the Rules in Lunacy, or as any special order of the Judge in Lunacy in any particular case, shall from time to time direct.

This subsection re-enacts sec. 19 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86).

The Chancery Visitors.—As to appointment, etc., of, see sec. 163, *ante.*

Lunatics so found by inquisition.—As to inquisitions, see sec. 90, *ante.* As to visiting of alleged lunatics by, see sec. 184, *post.*

At such times.—See subss. (2) and (3), *inf.*

Rotation of visitors.

In such rotation.—Under the Lunacy Regulation Act 1853 the legal visitor who took his office without the intention of visiting did not visit.[1] All the visitors now visit in rotation.

Inquiries and investigations.

Inquiries and investigations . . . them.—It is the duty of committees to facilitate inquiries by the Chancery Visitors. As to reports by Chancery Visitors upon lunatics so found, see sec. 185, *post.*

[1] Report of 1859, Ans. 1071, 1072.

Sec. 183 (2), (3).

The Rules in Lunacy.—See Rules in Lunacy 1892, rr. 100-109, *post.*

Special order.—One of the medical visitors in Chancery is generally requested to visit alleged lunatics who demand a jury (*ante* p. 275, and sec. 184, subs. (1), and sec. 185, subs. (2), *inf.*), and lunatics so found for the purpose of supersedeas proceedings (*ante* p. 320).

The Judge in Lunacy.—See sec. 108, subs. (1). The Master may require the Chancery Visitors to visit persons dealt with under sec. 116, *ante* (see Rules in Lunacy 1893, r. 5, *post*).

(Number of and interval between visits.)

(2) Provided that every lunatic shall be personally visited and seen by one of the Chancery Visitors twice at least in every year, and such visits shall be so regulated as that the interval between successive visits to any such lunatic shall in no case exceed eight months.

This subsection re-enacts the first clause of sec. 20 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86), as amended by sec. 4 of the Lunacy Regulation Amendment Act 1882 (45 & 46 Vict. c. 82).

See notes to preceding subsection.

Every lunatic.—See proviso as to lunatics in private houses, subs. (3), *inf.*

Twice at least.—Before the Act of 1862 the Chancery Visitors did not—practically—visit the patients more than once a year.[1]

So that the interval . . . months.—Under the practice prior to 1862 twelve and sometimes eighteen months intervened between two visits.[2] "Month" means calendar month (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3).

(Lunatics resident in private houses.)

(3) Provided also, that every lunatic resident in a private house shall, during the two years next following inquisition, be visited at least four times in every year.

This subsection re-enacts a proviso substituted by sec. 4 of the Lunacy Regulation Amendment Act 1882 (45 & 46 Vict. c. 82), for the proviso to sec. 20 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86).

See notes to preceding subsections.

Private house.—As to reception of lunatics so found in private houses, see sec. 12, *ante.*

Chancery Visitors to visit alleged lunatics.

184. (1) The Chancery Visitors shall also visit such persons alleged to be lunatics, and shall make such

[1] Report of 1859, Ans. 1062. [2] *Ib.* Ans. 1063.

inquiries and reports in reference to them as the Judge in Lunacy directs, and at the expiration of every six months they shall report to the Lord Chancellor the number of visits made, the number of patients seen, and the number of miles travelled during such months, and shall on the first of January in each year make a return to the Lord Chancellor of all sums received by them for travelling expenses, or upon any other account. Sec. 184 (1), (2).

This subsection re-enacts the first clause of sec. 21 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86).

Chancery Visitors.—As to appointment, etc., of, see sec. 163, *ante*.

As to visitation of lunatics so found by, see sec. 183, *ante*.

As to visitation of lunatics dealt with under sec. 116, *ante*, see Rules in Lunacy 1893, r. 5, *post*.

Lunatics.—Definition of, sec. 341, *post*.

Judge in Lunacy.—See sec. 108, subs. (1), *ante*.

Report to.—Such reports do not fall within reports "of bodily and mental condition" under sec. 317, subs. (2), *post*, so as to make wilful misstatement of material fact in, a misdemeanour. But default in sending them within the prescribed time exposes a visitor to the penalty provided by sec. 320, *post*. As to protection of persons making reports, see sec. 330, *post*. As to reports by Chancery Visitors on health and treatment, see sec. 185, *inf*. Reports as to alleged lunatics.

The Lord Chancellor.—See definition of in sec. 12 of the Interpretation Act 1889 (52 & 53 Vict. c. 63) cited, *ante* p. 198.

A return.—See notes to report, *sup*.

All sums . . . account.—The travelling and other expenditure of the Chancery Visitors to the amount sanctioned by the Treasury is paid out of moneys provided by Parliament (sec. 163, subs. (4), *ante*). See order of 26th Jan. 1891 in Appx. *post*. Travelling, etc., expenses of visitors.

(2) A copy of every report and return under this section shall be laid before Parliament on or before the first of February in each year, if Parliament be then sitting, and if not, within twenty-one days next after the commencement of the next session. (Copy of reports to be laid before Parliament.)

This subsection re-enacts the second clause of sec. 21 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86).

See notes to preceding subsection.

Within twenty-one days.—"Days" means all days. The day of the commencement of the session is excluded. See *ante* p. 117.

Sec. 185 (1), (2).

Chancery Visitors to report to Lord Chancellor.

185. (1) The Chancery Visitors shall respectively, within a convenient time after each visit, make a report in writing of the state of mind and bodily health and of the general condition and also of the care and treatment of each person visited, which reports shall, annually or oftener, as the Lord Chancellor directs or the board of visitors think expedient, be submitted to the Lord Chancellor.

This subsection re-enacts the first clause of sec. 106 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

The Chancery Visitors.—See notes to sec. 184, subs. (1), *ante.*

Visitation of lunatics so found.

Each visit.—This section applies to the visitation of lunatics so found under sec. 183, *ante*, but not to the visitation of alleged lunatics under sec. 184, *ante*, because in the latter case the Judge in Lunacy directs the reports that are to be made. Such reports come within sec. 186, *inf.* They would, however, be treated as confidential independent of that section.[1]

Report in writing.—Wilful misstatement of material fact in, is a misdemeanour (sec. 317, subs. (2), *post*). *Aliter*, in the case of reports to the Lord Chancellor and returns under sec. 184, subs. (1), *sup.* As to penalty for default in sending, see sec. 320, *post.* As to protection of persons making, see sec. 330, *post.* As to secrecy of, see sec. 186, *post.* As to special reports by Chancery Visitors, see subs. (2), *inf.*

The Lord Chancellor.—See notes to sec. 184, subs. (1), *sup.*

The board of visitors.—See sec. 167, *ante.*

(Special reports by Chancery Visitors.)

(2) The Chancery Visitors respectively shall make separate or special reports on any case to the Lord Chancellor as and when they or the board of visitors think expedient, and in particular shall report to him, without delay, any instance in which, on proceeding to visit, they have been unable to discover the residence of or have been by any other circumstance prevented from actually seeing on that occasion the lunatic whom they intended to visit.

This subsection re-enacts the second clause of sec. 106 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

See notes to preceding subsections.

[1] Cp. *re H. W. Strachan*, 1895, 1 Ch. 439.

Sec. 186 (1).

Unable to discover.—It is the duty of the committee of the person within three days after any change of residence to post to the Visitors' Office, Royal Courts, London, notice thereof. See r. 11, Rules in Lunacy 1893, *post.*

Where unable to discover residence of lunatic.

Any other circumstance . . . visit.—It is the duty of the committee of the person to facilitate visitation by Chancery Visitors. As to penalty for obstructing the Chancery Visitors, see sec. 321, subs. (1), *post.*

Or under other circumstances.

186. (1) The reports of the Chancery Visitors shall be filed and kept secret in their office, and shall not be open to the inspection of any person save the members of the board of visitors, and the Judge in Lunacy and such persons as he specially appoints.

Reports to be kept secret.

Origin of subsection.

This subsection re-enacts the first clause of sec. 107 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), as amended by sec. 25 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86), and sec. 31 of the Judicature Act 1875 (38 & 39 Vict. c. 77), by which the offices of the secretary to the Chancery Visitors and his clerk were abolished.

The reports, i.e. under sec. 184, subs. (1), and sec. 185, *ante.*

The Chancery Visitors.—See notes to sec. 184, subs. (1), *ante.*

Filed.—For the purposes of reference and periodical submission to the Lord Chancellor (see sec. 185, subs. (1), *ante*).

Secrecy of Chancery Visitors' reports.

Roe v. *Nix.*

Kept secret.—An interesting case under this section came before the Probate Division in 1892—*Roe* v. *Nix.*[1] The plaintiff, one of the next of kin of a lunatic—a lady—so found by inquisition, propounded, as executor, the last will of the lunatic, who had died in an asylum without the inquisition ever having been superseded. The testatrix had previously, while in the asylum, made other wills and codicils. All her testamentary dispositions were challenged by the committees of the person and estate, who called as witnesses the Chancery Visitors. The Visitors attended on their subpœna by the Lord Chancellor's leave. The chairman of the board of visitors admitted that the reports sent in by him and his colleagues as to the lunatic's condition at the critical periods were still extant, but stated that he was precluded from producing them by the terms of this subsection, at any rate without an order of the Lord Justice who had specially had charge of the lunatic's case. Counsel, by the consent of all parties, and with the concurrence of the learned Judge—Barnes, J.—who was trying the case, applied to the Lords Justices Bowen and Lindley to empower the witness to produce the reports. But their Lordships refused, on the ground that as by subs. (2), *inf.*, the reports ought to have been destroyed on the lunatic's death, they must be treated as having been destroyed; and when Barnes, J., at the request of all parties, went to see the Lords Justices on the subject, they consulted

[1] 1893, Prob. 55.

Sec. 186 (2).

Lord Esher, M.R., and Lopes and Kay, L.JJ., and all the five judges concurred in the view which Bowen and Lindley, L.JJ., had already expressed, and further, that even on a subpœna the Chancery Visitors would be bound to treat the reports as destroyed. The reports therefore were not produced. But Barnes, J., held that the effect of the reports might be given by the visitor under his subpœna. His Lordship said—in answer to a suggestion by counsel that the object of destroying the reports was that the mental condition of the lunatic should not become known:—"No; they are to be treated as if destroyed on the death of the lunatic. The evidence of the witnesses who saw the patient and who made the reports can be given. There is no section prohibiting a witness called upon subpœna from giving his evidence. The object of producing the reports would be that the Court and jury might see whether the memories of the witnesses were accurate. The reports *per se* would not be evidence."

Query whether production of the notes made by the Chancery Visitors with a view to making their reports (which are not destroyed under subs. (2), *inf.*, on the lunatic's death) could not be obtained.

Inspection.—As to when inspection of confidential documents and other evidence in the custody of the Judge in Lunacy will be allowed, see *ante* p. 261.

Board of Visitors.—See sec. 167, *ante.*

The Judge in Lunacy.—See sec. 108, subs. (1), *ante.*

(Reports of Chancery Visitors, when to be destroyed.)

(2) All the reports relating to any particular patient shall be destroyed on his death, and shall also be destroyed on the inquisition in his case being superseded, or being vacated and discharged on a traverse, unless the Judge in Lunacy, within fourteen days after the supersedeas, or the vacating and discharge on a traverse, specially orders that the same be not destroyed until the lunatic's death.

This subsection re-enacts the second clause of sec. 107 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

The reports.—See sec. 184, subs. (1), and sec. 185, *ante.*

Shall be destroyed.—And will be presumed to be, although they are not in fact so destroyed (see *Roe* v. *Nix*, *sup.*). The visitors may, however, give oral evidence as to their contents (*ib. sup.*). See notes to subs. (1), *sup.*

Inquisition.—Definition of, sec. 341, *post.* As to inquisitions, see sec. 90, *ante.*

Supersedeas.—See *ante* p. 320.

Traverse.—See *ante* p. 306.

Judge in Lunacy no authority to order preservation of reports after death of lunatic.

Judge in Lunacy.—See sec. 108, subs. (1). It will be observed that the Judge in Lunacy has no authority to order the reports to be preserved after the patient's death. The question whether there

should not be such authority appears to be worthy of the consideration of the Legislature. As an instance of the inconvenience which may arise from the present practice, see *Roe* v. *Nix*, *sup.* Sec. 187 (1).

Lunatic's death.—As to death of lunatic, see r. 46, Rules in Lunacy 1892, *post.*

Lunatics in Asylums.

187. (1) Two or more Commissioners, of whom one shall be a medical practitioner and one a barrister, shall once at least in each year visit every asylum and shall inquire— Visits by Commissioners.

(*a*) Whether the provisions of the law have been carried out:

(i.) As to the construction of the building;

(ii.) As to visitation;

(iii.) As to management;

(iv.) As to the regularity of the admission and discharge of patients;

(*b*) Whether divine service is performed;

(*c*) Whether any system of coercion is practised, and its result;

(*d*) As to the classification of patients and the number of attendants on each class;

(*e*) As to the occupations and amusements of the patients, and their effects;

(*f*) As to the bodily and mental condition of the pauper patients when first admitted;

(*g*) As to the dietary of pauper patients;

(*h*) As to such other matters as to the visiting Commissioners seem fit.

This subsection re-enacts in substance sec. 110 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Two or more Commissioners.—Definition of Commissioners, sec. 341, *post.* One or more Commissioners may visit an asylum at any time, subs. (2), *inf.* Appointment, etc., of Commissioners, sec. 151, *ante.*

Sec. 187 (1).

A medical practitioner.—As to medical Commissioner or substitute for, see sec. 151, subss. (2), (3), *ante.*

A barrister.—See sec. 151, subss. (2), (3), *ante.*

Once at least in each year . . . visit.—As to duties of Chancery Visitors in regard to visitation, see sec. 183, *ante.* As to visits by visiting committee, see secs. 188, 189, *post.* As to visitation of hospitals and licensed houses by Commissioners, see secs. 191, 192, *post;* by visitors, see sec. 193, *post;* and as to inquiries and proceedings on such visitation, see secs. 194-197, *post.* As to visitation of single patients, see secs. 198-200, *post;* of paupers, secs. 201-203, *post.* As to special visits, see secs. 204, 205, *post.* As to visitation of lunatics in private families and charitable establishments, see sec. 206, *post.* A visit may be made at any time by one or more Commissioners (see subs. (2), *inf.*).

Asylum.—Definition of, sec. 341, *post.* See preceding note. Sec. 110 of the Lunacy Act 1845 (8 & 9 Vict. c. 45) extended to gaols.

The Commissioners visit criminal lunatic asylums under sec. 14 of the Criminal Lunatic Asylums Act 1860 (23 & 24 Vict. c. 75), *post.*

Inquire.—As to inquiries on visitation of hospitals and licensed houses, see secs. 194-197, *post;* of single patients, secs. 198-200, *post;* of workhouses, sec. 203, *post;* on special visits, and visits to private families, secs. 204-206, *post.*

Construction.—As to provision of asylum accommodation, see secs. 254, 255, *post.* See corresponding provision in regard to hospitals and licensed houses, sec. 194, subs. (1) (*a*), *post.*

Visitation, e.g. by guardians of union, as to lunatic chargeable to them (see sec. 201, subs. (1)); and by visiting committee (sec. 188, *post*). See corresponding provisions in regard to hospitals and licensed houses, sec. 194, subs. (1) (*c*), (*d*), (*e*), *post.*

Management.—As to the making of rules for the management of asylums, see sec. 275, *post.*

Regularity of admission and discharge.—As to discharge of patients see secs. 72-82, *ante.*

Divine service.—As to performance of divine service in asylums, see sec. 277, subs. (2), *post.* See corresponding provision as regards hospitals and licensed houses, sec. 194, subs. (1) (*f*), *post.*

Coercion.—As to mechanical restraint, see sec. 40, *ante;* and Rules of 1895, *post.* See corresponding provision as regards hospitals and licensed houses, sec. 194, subs. (1) (*b*), *post.*

Pauper patients.—As to admission of to asylums, see secs. 15 and 16, *ante.* Definition of "pauper," sec. 341, *post.* See corresponding provision as to hospitals and licensed houses, sec. 194, subs. (1) (*f*), *post.*

Dietary.—The visiting committee determine the diet of patients (see sec. 275, subs. (6), *post*).

As to diet of paupers in hospitals and licensed houses, see sec. 52, subs. (1), *ante;* and inquiries by visiting Commissioners and visitors as to, see sec. 194, subs. (1) (*f*), *post.*

As to duty of clerk of asylum to send copies of entries and

remarks by visiting Commissioners to office of Commissioners in Lunacy, see r. 20 of the Rules of the Commissioners in Lunacy 1895, *post*. Sec. 188.

(2) Any one or more of the Commissioners may at any time visit any asylum with the like powers as are by this section given to two or more Commissioners. (Commissioners may visit at any time.)

This subsection re-enacts in substance sec. 30 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

See notes to preceding subsection.

At any time.—The visit may be made by day or night; and see sec. 191, subs. (1), *post*, as to hospitals and licensed houses.

188. At least two members of the visiting committee shall together, once at least in every two months, inspect every part of the asylum, and see every patient therein, so as to give every one, as far as possible, full opportunity of complaint, and examine the order and certificate or certificates for the admission of every lunatic admitted since the last visitation, and the general books kept in the asylum; and shall enter in the visitors' book any remarks they think proper in regard to the condition and management of the asylum and the lunatics therein, and shall sign the book upon every visit. Visits by visiting committee.

This section re-enacts in substance sec. 61 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Visiting committee.—Definition of, sec. 341, *post*. As to appointment of, see sec. 169, subs. (1).

Together.—A single member of the committee has no power of visitation in the case of asylums. *Aliter*, as regards licensed houses within the jurisdiction of visitors appointed by justices, see sec. 193, subs. (1), *post*; and as regards Commissioners, see sec. 187, subs. (2), *sup*. Visitation by single member of committee.

Once at least, etc.—In the case of the Commissioners, the prescription is once at least in every year (see sec. 187, subs. (1), *ante*). The Commissioners inquire as to visitation by visiting committee (see sec. 187, subs. (1) (*a*) (ii.), *ante*).

Asylum.—Definition of, sec. 341, *post*.

So as to give . . . complaint.—As to visitation of lunatics received under a contract, see sec. 189, *post*.

The order . . . admission.—As to reception orders, see sec. 4, subs. (1), secs. 11, 12, 23, *ante*. As to summary reception orders, see secs. 13 *et seq.*, *ante*. As to medical certificates, see sec. 4, subs.

Sec. 189 (1), (2).

(2), sec. 11, subs. (1), sec. 13, subs. (3), sec. 16, sec. 23, subs. (2), *ante*.

The general books.—As to these, see Rules of the Commissioners in Lunacy 1895, r. 1, *post*.

Visitors' book.—See *ib.* r. 1 (*a*), *post*.

Lunatics.—Definition of, sec. 341, *post*.

Visits to lunatics received under a contract.

189. (1) During the continuance of a contract for the reception of the pauper lunatics of a county borough or other borough in a county asylum, not less than two members of the visiting committee of the borough appointed for the purpose shall together, at least once in every six months, visit the asylum, and see and examine the lunatics received under the contract, and shall report the result of their visit to the council of the borough.

This subsection re-enacts the third clause of sec. 7 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

A contract.—As to such contracts, see secs. 243, 269, *post*.

Pauper.—Definition of, sec. 341, *post*.

Lunatic.—Definition of, sec. 341, *post*.

County borough.—Definition of, sec. 341, *post*.

Asylum.—Definition of, sec. 341, *post*.

Visiting committee.—Definition of, sec. 341, *post*. Appointed by, sec. 169, subs. (1), *ante*. As to general visitation of asylums by, see sec. 188, *ante*.

Together.—See note to same word in, sec. 188, *sup*.

At least once in every six months.—The visitation has to be made in other cases at least once in every two months (see sec. 188, *sup.*). "Month" means calendar month (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3).

Visit.—They may call in a medical practitioner if they think fit (see subs. (2), *inf.*).

Report.—As to entry of report among records of council of borough, and inspection by Commissioners, see subs. (3), *inf*.

(Employment and remuneration of medical practitioner by visitors.)

(2) The visitors may, if they think fit, be accompanied by a medical practitioner who is not an officer of the asylum, and they may by order direct payment to such medical practitioner of such a sum as they think fit for his services, and such sum shall upon the production of the order be paid to the medical practitioner by the treasurer of the borough.

Sec. 190 (1).

This subsection re-enacts the fourth and part of the fifth clauses of sec. 7 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See notes to preceding subsections.

A medical practitioner.—Definition of, sec. 341, *post.*

An officer of the asylum.—Viz. the medical officer or superintendent of the asylum (see sec. 276, subs. (1) (*b*) and (*c*), *post*).

The order be paid.—As to fund out of which such payment will be made, see sec. 225, *post.*

(Reports under this section.)

(3) Every report under this section shall be entered among the records of the council of the borough, and may be inspected by the Commissioners, and the Commissioners may, if they think fit, require the town clerk of the borough to transmit to them a copy of any such report.

This subsection re-enacts the sixth clause of sec. 7 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See notes to preceding subsections.

Copy.—As to penalty for default in sending, see sec. 320, *post.*

Reports by visiting committee.

190. (1) The visiting committee of every asylum shall in every year lay before each local authority to which the asylum belongs, at their quarterly meeting in November, or at such other time as the local authority appoints, a report in writing of the state and condition of the asylum, and as to its sufficiency to provide the necessary accommodation, and as to its management and the conduct of the officers and servants and the care of the patients therein.

This subsection re-enacts the first clause of sec. 62 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

The visiting committee.—Definition of, see sec. 341, *post;* appointment of, see sec. 169, *ante;* visits by, see sec. 188, *ante.*

Asylum.—Definition of, see sec. 341, *post.*

Local authority.—Definition of, see sec. 240, *post.*

Quarterly meetings.

Quarterly meetings.—As to these, see sec. 75, subs. (13) of the Local Government Act 1888 (51 & 52 Vict. c. 41), and Schedule ii. rr. 1, 2 of the Municipal Corporations Act 1882 (45 & 46 Vict. c. 50).

Copy of report to be sent to Commissioners.

A report.—A copy of this report is to be sent to the Commissioners in Lunacy by the clerk to the visiting committee within twenty-one days after it has been laid before the local authority (Rules of the Commissioners in Lunacy 1895, r. 30, *post*).

Sec. 190 (2).

(2) The committee may in the report make such remarks in relation to any matters connected with the asylum as they think fit.

This subsection re-enacts the second clause of sec. 62 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See preceding subsection and notes.

Lunatics in Hospitals and Licensed Houses.

Visits of the Commissioners to.

191. (1) Every hospital and licensed house may at any time, by day or night, be visited by any one or more of the Commissioners.

This subsection is based upon sec. 71 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and secs. 29 and 30 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

Hospital.—Definition of, see sec. 341, *post*. As to visitation of asylums, see secs. 187-190, *ante*; of single patients, see secs. 198-200, *post*; of paupers, see secs. 201-203, *post*. As to special visits, see sec. 205, *post*; and as to visitation of lunatics in private families and charitable establishments, see sec. 206, *post*.

Licensed house.—As to licensed houses, see sec. 177, subs. (1), *ante*, and sec. 206, *post*.

May.—As to compulsory visitation, see subs. (2), *inf*.

At any time, by day or night.—As to the visitation of asylums by night, see sec. 187, subs. (2), *ante*; and in special cases, see sec. 204, subs. (1), *post*. A single patient may only be visited at *reasonable times* (see sec. 199, subs. (1), *post*); a pauper in an institution for lunatics between 8 a.m. and 6 p.m. (see sec. 201, subs. (1), *post*); and a workhouse during the day only (see sec. 203, *post*). Special visits may, however, apparently be made at any time (see secs. 204 and 205, *post*); and there is an express provision for the visitation of lunatics in private families and charitable establishments at any time (see sec. 206, subs. (2), *post*). The visits under this section are to be made without previous notice (subs. (5), *post*). One or more visitors of houses licensed by justices may visit by day or night (see sec. 193, subs. (1)). There have been cases of night visits by the Commissioners.[1]

Visitation at reasonable times.

Visitation by single Commissioner.

One or more.—Under the section above noted in the Act of 1845 a single Commissioner was not, although two or more were, authorised to make night visits. This power of extraordinary visitation was given to a single Commissioner, who may, it will be observed, be either medical or legal, by the Lunacy Act of 1862.[2]

[1] Report of 1859, Lord Shaftesbury's evidence, Ans. 148.

[2] It was heartily approved of by Lord Shaftesbury, who was Chairman of the Lunacy Commissioners at the time. See Report of 1859, Ans. 896-900.

The Commissioners.—Definition of, see sec. 341, *post*; appointment of, see sec. 150, *ante*.

(2) Every licensed house within the immediate jurisdiction of the Commissioners shall be visited six times a year (namely)— (Licensed houses and hospitals.)

(*a*) Four times by not less than two Commissioners, of whom one shall be a medical practitioner and one a barrister; and

(*b*) Twice by one or more of the Commissioners.

This subsection is taken from the first clause of sec. 61 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and the first clause of sec. 29 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

See notes to preceding subsection.

Licensed house.—As to such houses, see sec. 177, *ante*, and sec. 207, *post*. The times of visitation may, however, be altered by the Lord Chancellor (see subs. (7), *inf.*).

The immediate jurisdiction.—See sec. 208, subs. (1), *post*; and Third Schedule, *post*.

Shall.—As to optional visitation, see subs. (1), *sup.*

A medical practitioner.—See sec. 151, subs. (2), *ante*.

A barrister.—See sec. 151, subs. (2), *ante*.

One or more.—One or more Commissioners may visit a hospital or licensed house at any time by day or night (see subs. (1), *sup.*).

(3) Every licensed house not within the immediate jurisdiction of the Commissioners shall be visited twice a year by not less than two Commissioners, of whom one shall be a medical practitioner and one a barrister. (Visitation of houses not within immediate jurisdiction of Commissioners.)

This subsection is taken from the first clause of sec. 61 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsections.

(4) Every hospital shall be visited once a year by not less than two Commissioners, of whom one shall be a medical practitioner and one a barrister. (Visitation of hospitals.)

This subsection re-enacts the second clause of sec. 61 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to subs. (2), *sup.*

Sec. 191 (5)-(7).

(Visitation without notice.)

(5) The visits of the Commissioners shall be made without previous notice.

This subsection is based upon the first and second clauses of sec. 61 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See subss. (1) and (2), *sup.*, and notes thereon. It applies to the visits of one or more Commissioners under subss. (1) and (2) (*b*), *sup.*

(Time and manner of visitation.)

(6) Every visit shall be made on such day or days, and at such hours, and for such length of time, as the visiting Commissioners or Commissioner may, subject to any direction of the Commissioners, think fit.

This subsection re-enacts the third clause of sec. 61 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See subss. (1)-(5), *sup.*

(Regulations as to visitation by Lord Chancellor.)

(7) The Lord Chancellor, on a representation by the Commissioners setting forth the expediency of the alteration, may by writing under his hand direct that during a specified period, or until the direction is revoked, the Commissioners shall not be required—

(*a*) To visit a house licensed by justices more than once a year;

(*b*) To visit a house licensed by the Commissioners and not receiving pauper patients more than twice a year.

This subsection re-enacts the last clause of sec. 61 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The Lord Chancellor.—See definition of in sec. 12 of the Interpretation Act 1889 (52 & 53 Vict. c. 63), cited *ante* p. 198.

Alteration.—As to the ordinary periods of visitation, see subss. (2) and (3), *sup.*

A house . . . justices.—See sec. 208, subs. (2), *post.*

A house . . . Commissioners.—See sec. 208, subs. (1).

Inspection of licence.

192. The visiting Commissioners at their first visit to a house licensed by justices after the grant or renewal of the licence shall examine the licence, and if the same is in conformity with this Act, shall sign the same,

or if it is informal shall enter in the visitors' book in what respect it is informal. Sec. 193 (1), (2).

This subsection re-enacts the concluding part of the fourth clause of sec. 61 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The visiting Commissioners.—See sec. 191, subs. (3), *sup.*

A house . . . justices.—See sec. 208, subs. (2), *post.*

The grant or renewal of the licence.—See secs. 210-223, *post*, as to the conditions on which licences are granted or renewed.

Enter in the visitors' book.—As to the visitors' book, see Rules of the Commissioners in Lunacy 1895, r. 1 (*a*), *post.* In case any such entry is made, the resident licensee of the licensed house must send a copy of it to the Office of the Commissioners (19 Whitehall Place, London, S.W.), and also to the clerk of the visitors within two clear days after the date of the visit (r. 24 (1) of the Rules of the Commissioners in Lunacy 1895, *post*). Visitors' book.

193. (1) Every licensed house within the jurisdiction of visitors appointed by justices may at any time, by day or night, be visited by one or more of the visitors. Visits of visitors to licensed houses.

This subsection is based on sec. 71 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and sec. 29 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

Visitors appointed by justices.—As to appointment of, see sec. 177, *ante.*

May.—As to compulsory visitation, see subs. (2), *inf.*

At any time by day or night.—Under sec. 71 of the Act of 1845 a single visitor was not authorised to make night visits. See corresponding provision as to Commissioners in sec. 191, subs. (1), *ante.* Visitation by single visitor.

(2) Every such house shall be visited— (Times of visitation.)

(*a*) Four times a year by not less than two of the visitors, of whom one shall be a medical practitioner; and

(*b*) Twice a year by one or more of the visitors.

This subsection is taken from the first clause of sec. 62 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Shall.—As to optional visitation, see subs. (1), *sup.*

A medical practitioner.—Definition of, sec. 341, *post.*

As to appointment and remuneration of, see sec. 177, subss. (1) and (12), *ante.*

The following card, enumerating the chief heads of inquiry, was issued by the Commissioners in 1877:[1]—

[1] 32nd Report, p. 88, and Appx. Q. In pars. 8 and 9 the changes required in the original card by subsequent legislation and rules have been introduced.

Sec. 193 (2).

VISITATION OF LICENSED HOUSES.

Visitation of licensed houses.

Visits to be made by two at least of visitors (medical visitor to be one) four times at least in every year.

Two additional visits every year by *any one* or more of the visitors.

Chief Statutory Heads of Inquiry at Visits.

Statutory heads of inquiry.

1. Divine service: when performed; to what number of patients.
2. Occupations and amusements.
3. Restraint and seclusion: amount of, and reasons for.
4. Classification of patients.
5. Pauper patients: condition on admission; dietary.
6. List of patients.
7. Orders and certificates of patients admitted since last visit to be inspected; licence to be examined and signed at first visit after grant or renewal.
8. Notices as to (interviews and letters) of private patients.[1]
9. Books to be inspected and signed—
   - Register of Patients.
   - Medical Journal.
   - Register of Mechanical Restraint.
   - Medical Case Book.
   - Register of Removals, Discharges, and Deaths.
   - Patients' Book.
   - Register of Voluntary Boarders.
   - Visitors' Book.
10. Entries to be made—

    In Visitors' Book, as to condition of house and patients; number under restraint; irregularities in orders and certificates; whether previous suggestions by Commissioners or visitors have been attended to or not; results of statutory and other inquiries.

    [The proportion of patients to attendants, their capacity and conduct, though not a statutory subject of inquiry, is very important.]

    In Patients' Book: observations as to state of mind or body of any patient.

Inspections and inquiries.

194. (1) The visiting Commissioners and visitors shall, at every visit to a hospital and licensed house which they are by this Act required to make, and any one or more of the Commissioners or visitors may at any other visit do all or any of the following things:—

[1] See sec. 42, *ante*.

Sec. 194 (1).

(*a*) Inspect any or every part of the building where lunatics are received, and every building communicating therewith or detached therefrom, but not separated by ground belonging to any other person, and every part of the ground and appurtenances held, used, or occupied therewith;

(*b*) See every patient and inquire whether any patient is under restraint, and why;

(*c*) Inspect the order and certificates or certificate for every patient received since the last visit;

(*d*) Consider the observations made in the visitors' book;

(*e*) Enter in the visitors' book a minute of the condition of the house, of the patients therein, and the number of patients under restraint, with the reasons thereof;

(*f*) Inquire—

When divine service is performed, and to what number of patients, and its effect;

What occupations and amusements are provided for the patients, and the results thereof;

How the patients are classified;

As to the condition of the pauper patients when first admitted;

As to the diet of the pauper patients;

As to the moneys paid to the manager on account of any lunatic under his care;

As to such other matters as may in their opinion require investigation.

Sec. 194 (1)-(3).

This subsection, down to the end of (*e*), is based on secs. 61 and 62 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and secs. 29 and 30 of the Lunacy Act 1862 (25 & 26 Vict. c. 111); (*f*) is based on sec. 64 of the Lunacy Act 1845, and secs. 29, 30, and 35 of the Lunacy Act 1862.

Visiting Commissioners.—See sec. 191, *ante.*

Visitors.—See sec. 193, *ante.*

Visitation.—As to visitation of hospitals and licensed houses, see secs. 191-93, *ante.*

Hospital.—Definition of, sec. 341, *post.*

Licensed house.—See sec. 177, *ante*, and sec. 208, *post.*

By this Act required to make.—See sec. 191, subss. (2) and (3), and sec. 193, subs. (2), *ante.* The provisions of this subsection do not apply to the optional visits under sec. 191, subs. (1), and sec. 193, subs. (1), *ante.*

Inspect . . . therewith.—Cp. sec. 187, subs. (1) (*a*) (i.), *ante.*

See every patient . . . why.—Cp. sec. 187, subs. (1) (*c*), *ante.*

Inspect . . . visit.—Cp. sec. 187, subs. (1) (*a*) (iv.), *ante.*

Consider . . . book.—See sec. 192, *ante.* As to visitors' book, see r. 1 (*a*), Rules of Commissioners in Lunacy 1895, *post.*

Divine service.—Cp. sec. 187, subs. (1) (*b*), *ante.*

Occupation and amusements.—Cp. sec. 187, subs. (1) (*e*), *ante.*

Classified.—Cp. sec. 187, subs. (1) (*d*), *ante.*

Diet.—Cp. sec. 187, subs. (1) (*g*), *ante.*

Manager.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Such other matters.—Cp. sec. 187, subs. (1) (*h*), *ante.*

(Entries in visitors' book.)

(2) The result of the foregoing inspections and inquiries, with such observations as may be thought proper, shall be entered in the visitors' book.

This subsection is based on sec. 66 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and secs. 29 and 30 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

See notes to preceding subsection.

Entered.—Copies of all such entries are to be sent by the manager to the Office of the Commissioners in Lunacy (19 Whitehall Place, London, S.W.), and also in the case of a house licensed by justices, by the resident licensee to the clerk of the visitors, within two clear days after the visit (r. 24 (1) of the Rules of the Commissioners in Lunacy 1895, *post*).

(Entries in patients' book.)

(3) Each visiting Commissioner or visitor may at any visit enter in the patients' book such observations as he thinks fit as to the state of mind or body of any patient,

and any irregularity which exists in any order or certificates, and also whether the suggestions (if any) made at any previous visit have been attended to, and any observations which may be thought proper.

This subsection is based on secs. 61, 62, and 66 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and secs. 29 and 30 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

See notes to preceding subsections.

Patients' book.—See r. 1 (2) of the Rules of the Commissioners in Lunacy 1895, *post*; also sec. 78, subs. (4), *ante*, and sec. 197, subs. (1), *post*.

Managers of hospitals and licensed houses to show every part and every patient to the visiting Commissioners and visitors.

195. (1) The manager of every hospital or licensed house shall show to each Commissioner and visitor visiting the same every part thereof, and every person therein detained as a lunatic.

This subsection re-enacts the first clause of sec. 63 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Manager.—Definition of, sec. 341, *post*.

Hospital.—Definition of, sec. 341, *post*.

Licensed house.—See sec. 177, *ante*, and sec. 208, *post*.

Shall show.—As to penalty for concealment, see subs. (2), *inf*.

As to books and documents to be produced, see sec. 195, *sup*.

Commissioner.—As to visitation of hospitals and licensed houses by, see secs. 191 and 192, *ante*.

Visitor.—As to visitation of hospitals and licensed houses by, see sec. 193, *ante*.

Lunatic.—Definition of, sec. 341, *post*.

(Penalty for concealment.)

(2) Every manager of a hospital or licensed house who conceals or attempts to conceal, or refuses or wilfully neglects to show, any part of the building, or any building communicating therewith or detached therefrom, but not separated as aforesaid, or any part of the ground or appurtenances held, used, or occupied therewith, or any person detained, or being therein, from any one or more of the visiting Commissioners or visitors, or from any person authorised under this Act to visit and inspect the hospital or house, or the patients therein or any of them,

Sec. 196 (1).

or who does not give full and true answers to the best of his knowledge to all questions which any visiting Commissioner or visitor asks in the execution of his office, shall be guilty of a misdemeanour.

This subsection re-enacts the second clause of sec. 63, and the last clause of sec. 64 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsection.

Separated as aforesaid, i.e. "not separated by ground belonging to any other person" (see sec. 194, subs. (1) (*a*), *ante*).

Misdemeanour.—As to prosecutions for, see secs. 325, 328, *post*.

As to punishment of, see note to sec. 7, subs. (4), *ante*.

Books and documents to be produced to visiting Commissioners and visitors.

196. (1) The manager of every hospital or licensed house shall lay before the visiting Commissioners or Commissioner, or the visitors or visitor, at each visit—

(*a*) A list of all the patients then in the hospital or house (distinguishing pauper patients from other patients, and males from females, and specifying such as are deemed curable);

(*b*) The several books by this Act or any Rules under this Act required to be kept by the manager and by the medical officer of a hospital or licensed house;

(*c*) All orders and certificates relating to patients admitted since the last visit;

(*d*) In the case of a licensed house the licence then in force;

(*e*) All other orders, certificates, documents, and papers relating to any of the patients at any time received into the hospital or licensed house which may be required to be produced.

This subsection re-enacts sec. 65 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and secs. 29 and 30 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

See notes to preceding section.

Sec. 197 (1), (2).

The several books.—As to these, see Rules of the Commissioners in Lunacy 1895, *post.*

Medical officer.—Definition of, sec. 341, *post.*

Orders and certificates.—See notes to sec. 188, *ante.*

Licence then in force.—As to licences, see secs. 207-223, *post.*

(2) Each visiting Commissioner or visitor shall sign the said books as having been produced.

(Books to be signed by Commissioner or visitor.)

This subsection re-enacts sec. 65 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and secs. 29 and 30 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

See notes to preceding subsection.

197. (1) Every Commissioner visiting a house licensed by justices shall carefully consider and give special attention to the state of mind of any patient, as to the propriety of whose detention there is a doubt or as to whose sanity their attention is specially called, and shall, if the state of mind of such patient is considered doubtful, and the propriety of his detention requires further consideration, make and sign a minute thereof in the patients' book.

Entries in the patients' books as to doubtful patients.

This subsection re-enacts in substance the first clause of sec. 68 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Commissioner.—Definition of, sec. 341, *post.*

Appointment of, sec. 150, *ante.*

Visitation of houses licensed by justices by, see sec. 191, subs. (3), *ante.*

Single Commissioners did not possess the power conferred by this section under the Act of 1845.

Make and sign a minute.—As to subsequent procedure, see subss. (2) and (3), *inf.*

Patients' book.—See r. 1 (2) of the Rules of the Commissioners in Lunacy 1895, *post;* see also sec. 78, subs. (4), and sec. 194, subs. (3), *ante.*

(2) A copy of every such minute shall, within two clear days after the same has been made, be sent by the manager of the house to the clerk of the visitors of the house, and the clerk shall forthwith communicate the same

(Copy of minute to be sent to clerk of visitors.)

Sec. 197 (2), (3).

to the visitors, or some two of them (of whom one shall be a medical practitioner), and the visitors shall thereupon immediately visit the patient and act as they think fit.

This subsection re-enacts the second clause of sec. 68 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsection.

Shall . . . be sent.—As to penalty for default, see subs. (3), *inf.*

Two clear days.—The terminals are excluded.[1] "Days" means all days, Sundays, etc., included (see *ante* p. 117).

Manager.—Definition of, sec. 341, *post.*

Clerk of the visitors.—As to appointment, etc., of, see sec. 178, *ante.*

Or some two.—As to power of two visitors to discharge patient detained without sufficient cause, see sec. 78, *ante.*

Medical practitioner.—Definition of, sec. 341, *post.* See also sec. 177, subs. (1), *ante.*

(Default a misdemeanour.)

(3) Every manager who omits to send a copy, as hereinbefore directed, of every such last-mentioned minute, and every clerk who neglects to communicate the same to two of the visitors as aforesaid, shall be guilty of a misdemeanour.

This subsection re-enacts the third clause of sec. 68 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsections.

Omits to send a copy.—As to prosecutions, see secs. 325 and 328, *post.*

As to evidence of sending copy, sec. 329, *post.*

Misdemeanour.—As to punishment for, see notes to sec. 7, subs. (4), *ante.*

Visits to Single Patients.

Annual visit to single patient. (Act of 1889, s. 34, subs. (3).)

198. One or more of the Commissioners shall once at least in every year visit every unlicensed house in which a single patient is detained as a lunatic and inquire into and report to the Commissioners on the treatment and state of bodily and mental health of the patient.

This subsection re-enacts sec. 34, subs. (3) of the Lunacy Act 1889.

One or more Commissioners . . . house.—Prior to the passing of the Act of 1889 there was no provision for the regular visitation of single

[1] *Liffin* v. *Pitcher*, 1842, 1 Dowl., N.S., 767.

patients. As to the former practice and its defects, see the evidence of Lord Shaftesbury before the Select Committee of 1859, Ans. 11, 272-295.

Shall.—As to optional visitation, see sec. 199, *inf.*

Single patients.—As to reception of, see sec. 4, *ante.*

Lunatic.—Definition of, sec. 341, *post.*

Report.—Wilful misstatement of material fact in, a misdemeanour, sec. 317, *post.*

As to protection of person making, see sec. 330, *post.* Report to be kept by secretary to Commissioners, subs. (4), *inf.*

The Commissioners.—Definition of, sec. 341, *post.*

Appointment, etc., of, sec. 150, *ante.*

Power to visit single patients, and report.

199. (1) Any one Commissioner, on the direction of the Commissioners, or of any two of them (of whom the one Commissioner may be one), may at all reasonable times visit a single patient, and inquire into and report to the Commissioners or the Lord Chancellor on the treatment and state of health, both bodily and mental, of the patient, and as to the moneys paid on his account.

This subsection re-enacts in substance sec. 92 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), sec. 27 of the Lunacy Act 1853 (16 & 17 Vict. c. 96), and sec. 35 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

See notes to preceding section.

The Commissioners.—Definition of, sec. 341, *post.*

Appointment, etc., of, sec. 150, *ante.*

May.—As to compulsory annual visitation, see sec. 198, *ante.*

At all reasonable times.—See note to sec. 191, subs. (1), *ante.*

The Lord Chancellor.—See definition of in sec. 12 of the Interpretation Act 1889 (52 & 53 Vict. c. 63), cited *ante* p. 198.

(Power of visitors for county or borough.)

(2) Any one or more of the visitors appointed for any county or borough shall, upon the request in writing of the Commissioners, or any two of them, have the like power as regards any single patient detained in an unlicensed house in such county or borough.

This subsection re-enacts the first clause of sec. 15 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

See notes to preceding subsection.

The visitors.—See sec. 177, *ante.*

County.—Definition of, sec. 341, *post.*

Sec. 199 (3), (4).

(Medical journal to be produced and signed.)

(3) Upon every visit under this section the medical journal shall be produced to the person making the visit, and he shall sign the same.

This subsection is based on sec. 14 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

Every visit.—Under the Lunacy Act 1853 (*sup.*), the medical journal was required to be produced to the visiting Commissioner only, on every visit.

Medical journal.—As to the medical journal, see rr. (1) (*d*), 4, and 11 of the Rules of the Commissioners in Lunacy 1895, *post.*

(Reports to be kept by secretary to Commissioners.)

(4) Every report under this section shall be kept by the secretary of the Commissioners, and a copy thereof shall, if the Commissioners think it expedient, be laid before the Lord Chancellor.

This subsection is based on the last clause of sec. 92 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsections.

Power to inspect. (Act of 1889, s. 34, subs. (4).)

200. (1) Any Commissioner visiting an unlicensed house may inspect any part of the house and the grounds belonging thereto.

This subsection re-enacts sec. 34, subs. (4) of the Lunacy Act 1889.

Any Commissioner . . . house.—As to powers for such visitation, see secs. 198 and 199, *ante.*

Inspect.—As to power of Commissioners to inspect asylums, see sec. 187, subs. (1), *ante;* hospitals and licensed houses, see sec. 194, *ante.* As to refusal to give Commissioners facilities for the exercise of their power, see subs. (2), *inf.*

(Refusal to show house a misdemeanour. Act of 1889, s. 34, subs. (5).)

(2) If the person having charge of a single patient refuses to show to any Commissioner, at his request, any part of the house wherein the single patient resides, or any part of the grounds belonging thereto, he shall be guilty of a misdemeanour.

This subsection re-enacts sec. 34, subs. (5) of the Lunacy Act 1889.

The person . . . patient.—As to reception of single patients, see sec. 4, *ante.*

Refuses . . . request.—See subs. (1), *sup.*

Misdemeanour.—As to prosecution for, see secs. 325 and 328, *post.* As to punishment for, see note to sec. 7, subs. (4), *ante.*

As to penalty for obstructing Commissioners, see sec. 321, subs. (1), *post.*

Visits to Paupers in certain Cases.

Visits to paupers in institutions for lunatics.

201. (1) A medical practitioner appointed by the guardians of a union, and also the guardians of any union shall be permitted, whenever they see fit, between eight in the morning and six in the evening, to visit and examine any pauper lunatic chargeable to the union confined in any institution for lunatics, unless the medical officer of the institution delivers to the person or persons intending to make the visit a statement signed by him certifying that for reasons set forth in the statement the visit would be injurious to the lunatic.

This subsection re-enacts the first part of sec. 65 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Medical practitioner.—Definition of, sec. 341, *post.*

Guardians.—Definition of, sec. 341, *post.*

Union.—Definition of, sec. 341, *post.*

Between . . . evening.—See notes to sec. 191, subs. (1), *ante.*

Pauper.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Chargeable.—As to chargeability of pauper lunatics, see sec. 286, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.* As to visits to paupers not in institutions for lunatics, see sec. 202, *inf.*

Medical officer.—Definition of, sec. 341, *post.*

(Entry in, and signature of, medical journal.)

(2) The medical officer shall forthwith enter in the medical journal the reasons set forth in the statement, and shall sign the entry.

This subsection re-enacts the last part of sec. 65 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See notes to preceding subsection.

Medical journal.—See Rules of the Commissioners in Lunacy 1895, rr. 1 (*d*), 4, and 11, *post.*

202. (1) Every pauper lunatic not in an institution for lunatics shall once in every quarter of a year (reckoning

Sec. 202 (1)-(3).

Visits to pauper lunatics not in an institution for lunatics.

the several quarters as ending on the thirty-first of March, the thirtieth of June, the thirtieth of September, and the thirty-first of December) be visited, if not resident in a workhouse, by the medical officer of the union, or district in which the lunatic is resident, and, if resident in a workhouse, by the medical officer of the workhouse.

This subsection re-enacts in substance the first clause of sec. 66 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Pauper lunatic.—A pauper lunatic is a lunatic (definition of, sec. 341, *post*) who is in receipt of relief. A mere order by a relieving officer to the medical officer to visit a lunatic alleged to be a pauper will not constitute relief so as to make the lunatic a pauper, or entitle the medical officer visiting him to remuneration under subs. (4).[1]

Not in an institution for lunatics.—As to visits to paupers in institutions for lunatics, see sec. 201, *sup.* Definition of institution for lunatics, sec. 341, *post.*

Medical officer.—Definition of, sec. 341, *post.* As to remuneration of, see subs. (4), *inf.*

Union.—Definition of, sec. 341, *post.*

If resident . . . workhouse.—This clause does not appear in the Lunatic Asylums Act 1853, *ubi sup.*

(Returns by guardians.)

(2) The guardians of every union shall from time to time furnish to every medical officer of the union forms for the prescribed returns relating to pauper lunatics not in an institution for lunatics.

This subsection re-enacts the fourth clause of sec. 66 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See for definitions notes to subs. (1).

Guardians.—Definition of, sec. 341, *post.*

Prescribed.—Definition of, sec. 341, *post.*

Forms.—Query whether the cost of such forms in a union is chargeable to the common fund.

Returns.—As to these, see r. 28 of the Rules of the Commissioners in Lunacy 1890, *post.*

(Reports where pauper lunatics delivered to custody of relative. Act of 1889, s. 40, subs. (3).)

(3) Where a pauper lunatic has, by order of the visiting committee, been delivered over to the custody of a relative or friend, to whom an allowance is made for the maintenance of the lunatic, the medical officer of the

[1] Cp. 57 J.P. 172.

union or district in which the lunatic resides shall, within three days after each quarterly visit, send to the visiting committee a report stating whether in his opinion the lunatic is properly taken care of, and may properly remain out of an asylum.

Sec. 202 (3)-(5).

This subsection re-enacts the first part of sec. 40, subs. (3) of the Lunacy Act 1889.

For definitions see notes to subs. (1), *sup.*

Visiting committee.—Definition of, sec. 341, *post*; appointment of, see sec. 169, *ante.*

The custody.—As to boarding-out lunatics with relatives or friends, see sec. 57, *ante.*

Relative.—Definition of, sec. 341, *post.*

Within three days.—The day of the quarterly visit is excluded. "Days" means days in all, Sundays, etc., included (see *ante* p. 117).

Report.—Wilful misstatement of material fact in such report is a misdemeanour (sec. 317, subs. (2), *post*).

Protection of person making, see sec. 330, *post.*

As to penalty for failure to send, see sec. 320, *post.*

As to prosecutions, see secs. 325, 326, 328, *post.*

Asylum.—Definition of, sec. 341, *post.*

(4) Each medical officer shall be paid two shillings and sixpence for each quarterly visit to a pauper not in a workhouse, and in addition two shillings and sixpence for every report sent to a visiting committee under this section, and those sums shall be paid by the same persons and be charged to the same account as the relief of the pauper.

(Fees of medical officer for visitation.)

This subsection consolidates and re-enacts the second clause of sec. 66 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), and the second part of sec. 40, subs. (3) of the Lunacy Act 1889.

See notes to subss. (1)-(3), *sup.*

(5) Nothing in this section shall relieve any medical officer from any obligation under this Act to give notice to a relieving officer or overseer when it appears to such medical officer that a pauper lunatic ought to be sent to an asylum.

(Notice to relieving officer or overseer.)

This subsection is new.

See notes to subss. (1)-(4), *sup.*

Sec. 203.

Any obligation.—As to such obligation, see sec. 14, subs. (1), and sec. 24, subs. (6), *ante*. As to penalty for failure to comply with obligation, see sec. 320, *post*.

Visitation of workhouses.

203. Any one or more of the Commissioners shall, on such day or days, and at such hours in the day, and for such length of time as he or they may think fit, visit all such workhouses in which there is or is alleged to be any lunatic, as the Commissioners by any resolution direct, and shall inquire whether the provisions of the law have been carried out, and also as to the dietary, accommodation, and treatment of the lunatics, and shall report in writing thereon to the Commissioners, and the Commissioners shall forward a copy of every such report to the Local Government Board.

This section re-enacts sec. 28 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

The Commissioners.—Definition of, sec. 341, *post*.

Query whether night visitation permissible.

Day.—It is conceived that no power of night visitation is conferred by this section. As to cases where such power is given, see sec. 191, subs. (1), sec. 193, subs. (1), *ante*.

Workhouses.—Definition of "workhouse," sec. 341, *post*.

Shall inquire.—As to power of Commissioners to order the removal of any lunatic from the workhouse to an institution for lunatics, see sec. 60, *ante*.

The Local Government Board.—The inquiries which the Local Government Board institutes from time to time with reference to lunatics in workhouses are held in virtue of its general control over its officers.

Special Visits.

Power to appoint a person to inquire into cases requiring immediate investigation.

204. (1) If, for reasons to be entered on the minutes of the board, any case appears to the Commissioners to call for immediate investigation, they may by order direct any competent person or persons to visit and report upon the mental and bodily condition of any lunatic or alleged lunatic in any institution for lunatics or workhouse, or under the charge of any person as a single patient, and to inquire into and report upon any matters into which the Commissioners are authorised to inquire.

Sec. 204 (1)-(3).

This subsection re-enacts the first clause of sec. 29 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

"Any case."

Any case.—That is, the case of any lunatic or alleged lunatic in any institution for lunatics or workhouse, or under charge as a single patient. As to powers of Lord Chancellor or Secretary of State to order special visits, see sec. 205.

The Commissioners.—Definition of, sec. 341, *post.*

By order.—The order must be under the seal of the Commission.

"Any competent person."

Any competent person—who has all the powers of a Commissioner (subs. (2), *inf.*); and is entitled to reasonable remuneration (subs. (3), *inf.*). As to punishment for wilful obstruction of, see sec. 321, subs. (2), *post.*

Report.—As to penalty for failure by any person, undertaking to comply with an order under this subsection, to report, see sec. 320, *post.*

Wilful misstatement of material fact in report is a misdemeanour (see sec. 317, subs. (2), *post*).

As to protection of person making report, see sec. 330, *post.*

Any matters . . . inquire.—As to such matters, see secs. 187, 194-200, and notes thereon, *ante.*

(Person making special visit to have powers of Commissioner.)

(2) Every such person shall, for the special purposes mentioned in the order, have all the powers of a Commissioner.

This subsection re-enacts the second clause of sec. 29 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

All the powers.—See secs. 187, 194-200, *ante.*

(3) The Commissioners may allow to any such person a reasonable sum for his services and expenses.

This subsection follows the third clause of sec. 29 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

See notes to subs. (1), *sup.*

Reasonable sum.

A reasonable sum.—Sums so allowed fall under the expenses of the Commissioners, and are paid out of moneys provided by Parliament under sec. 150, subs. (2), *ante.*

Visits to lunatics so found, and other lunatics.

205. (1) The Lord Chancellor in the case of a lunatic so found by inquisition, and the Lord Chancellor or a Secretary of State in any other case, may at any time, by an order in writing under the hand of the Lord Chancellor or the Secretary of State, as the case may be, directed to the Commissioners or any of them, or to any other person,

Sec. 205 (1), (2).

require the persons or person to whom the order is directed to visit and examine a lunatic or alleged lunatic, and to inspect any place in which a lunatic or alleged lunatic is detained, and to report to the Lord Chancellor or to a Secretary of State upon such matters as in the order are directed to be inquired into.

This subsection consolidates and re-enacts sec. 112, and the first clause of sec. 113 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The Lord Chancellor.—See definition of in sec. 12 of the Interpretation Act 1889 (52 & 53 Vict. c. 63), cited *ante* p. 198. An application under this section should be made to the Lord Chancellor privately and not by petition or in Court.[1]

Lunatic.—Definition of, sec. 341, *post.*

So found by inquisition.—Definition of, sec. 341, *post.* As to inquisitions, see sec. 90, *ante.*

Secretary of State.—See definition of in sec. 12 of the Interpretation Act 1889 (52 & 53 Vict. c. 63), cited *ante* p. 169.

In any other case.—These words include the case of any lunatic or alleged lunatic in any institution for lunatics or workhouse, or under charge as a single patient (see sec. 204, subs. (1), *ante*), and also of any criminal lunatic (see *post*).

The persons or person, etc.—Of course the Lord Chancellor cannot *require* persons not subordinate to him in any way to visit, etc.

Visit and examine.—As to punishment for wilful obstruction of any person directed to visit and examine, see sec. 321, subs. (2), *post.* As to remuneration and expenses of person employed under this subsection, see subss. (2)-(4), *inf.*

Report.—Wilful misstatement of material fact in, is misdemeanour (see sec. 317, subs. (2), *post*).

As to penalty for failure to report, see sec. 320.

As to protection of person making report, see sec. 330, *post.*

(Remuneration of person making special visits.)

(2) Every person (not being a Commissioner) employed under this section may be paid such sum of money for his services as the Lord Chancellor or a Secretary of State thinks reasonable.

This subsection is based upon the second clause of sec. 113 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and sec. 33 of the Lunacy Act 1853 (16 & 17 Vict. c. 97).

See notes to subs. (1).

Every person.—See subs. (1), *sup.*

Not being a Commissioner.—The Commissioner is to be allowed his

[1] *Re Knight*, 1831, Shelf. Lun. 696 n. (*d*), 9 L.J. Ch. 230.

expenses (subs. (3)). As to salary of Commissioners, see sec. 150, subs. (2), *ante*.

Sec. 205 (3), (4).

Such sum.—As to funds out of which such sums are paid, see subs. (4), *inf.*

(3) Every person so employed, whether a Commissioner or not, shall be allowed his reasonable travelling or other expenses while so employed.

(Travelling, etc., expenses to be allowed.)

This subsection re-enacts the third clause of sec. 113 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and sec. 33 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

See subs. (2), and notes thereon, *sup.*

(4) Sums payable under this section shall be paid out of moneys provided by Parliament.

Under the corresponding provisions in the Acts of 1845 and 1853 (see note to subs. (3) *sup.*) such sums were paid out of the Contingency Fund of the Home Office.

Lunatics in Private Families and Charitable Establishments.

206. (1) If it comes to the knowledge of the Commissioners that any person appears to be without an order and certificates detained or treated as a lunatic or alleged lunatic by any person receiving no payment for the charge, or in any charitable, religious, or other establishment (not being an institution for lunatics), they may require the person by whom the patient is detained, or the superintendent or the principal officer of the establishment, to send to them, within or at such a time or times as the Commissioners may appoint, a report or periodical reports by a medical practitioner of the mental and bodily condition of the patient, with all such other particulars as to him and his property as they think fit.

Lunatics in private families and charitable establishments. (Act of 1889, s. 42, subs. (1).)

Origin of section.

This section re-enacts sec. 42, subs. (1) of the Lunacy Act 1889, which was passed on the recommendation of the Dillwyn Committee, that reports should be sent to the Commissioners of patients kept

Sec. 206 (1)-(3).

under restraint in private families or religious houses, provided that the reports were confidential and the patients confirmed lunatics (Report of 1878, p. v.).

The Commissioners.—Definition of, sec. 341, *post.*

Without an order or certificates.—As to reception of lunatics under orders and certificates, see secs. 4, 11, 12, 13-23, 24, *ante.*

Lunatic.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

They may require.—As to power of Commissioners to visit, etc., in such cases, see subs. (2), *inf.*; and as to discharge of such patients, see subs. (3), *inf.*

Report.—In their 33rd Annual Report, at p. 136, the Commissioners in Lunacy adopted a suggestion made by Dr. Nugent to the Dillwyn Committee (Evidence, Ans. 2879-2881), that it should be made penal for the medical attendant to refrain from reporting where the illness and consequent restraint or detention had lasted for a period of say six months. Effect is given to the spirit of this recommendation by sec. 320, *post.*

Wilful misstatement of material fact in report is a misdemeanour (sec. 317, subs. (2), *post*).

As to protection of person making report, see sec. 330, *post.*

A medical practitioner.—Definition of, sec. 341, *post.*

(Visitation by one or more Commissioners. Act of 1889, s. 42, subs. (2).)

(2) Any one or more of the Commissioners may at any time visit any such patient and report the result of the visit to the Commissioners, and may exercise, with respect to such patient, all the powers (except that of discharge) given to them as to persons confined in any institution for lunatics, or as single patients.

This subsection re-enacts sec. 42, subs. (2) of the Lunacy Act 1889.

See notes to subs. (1).

All the powers . . . patients.—See sec. 59, *ante.*

As to discharge, see subs. (3), *inf.*

(Commissioners may transmit reports to Lord Chancellor. Act of 1889, s. 42, subs. (3).)

(3) The Commissioners may, if they think fit, transmit any reports received by them, or may report the results of any inquiries made by them under this section, to the Lord Chancellor, who may thereupon make an order for the discharge of the patient from the custody in which he is detained or for his removal to an institution for lunatics, or to such other custody as he may think fit, and the

Sec. 206 (4), (5).

expenses properly incurred of carrying any such order into effect and of maintaining the patient if so removed shall, if the order so directs, be paid by the guardians of the union in which the patient was found, until the authority legally liable for his maintenance has been ascertained; and such guardians shall have the same right to recover any such expenses paid by them against the lunatic and his estate, and the person or authority legally liable for his maintenance as in the case of orders for maintenance under this Act.

This subsection re-enacts sec. 42, subs. (3) of the Lunacy Act 1889.

See notes to subss. (1) and (2), *sup.*

Lord Chancellor.—See definition of in sec. 12 of the Interpretation Act 1889 (52 & 53 Vict. c. 63), cited *ante* p. 198.

Guardians.—Definition of, sec. 341, *post.*

Union.—Definition of, sec. 341, *post.*

The authority . . . maintenance.—As to ascertaining such authority, see secs. 289, 290, *post.*

Expenses.—As to right of guardians to recover expenses against the lunatic and his estate, see sec. 132, *ante*, and secs. 299, 300, *post.*

(Powers of justice where order made under section. Act of 1889, s. 42, subs. (4).)

(4) Where an order is made by the Lord Chancellor under this section for removal of a lunatic to an asylum, any justice of the county or borough in which the asylum is may exercise all the authorities conferred upon a justice by this Act, for the purpose of making the lunatic's property applicable to his maintenance and for maintaining him as a pauper.

This subsection re-enacts in substance sec. 42, subs. (4) of the Lunacy Act 1889.

See notes to preceding subsection.

Any justice.—Under sec. 42, subs. (4) of the Act of 1889 the powers under this subsection were conferred only on two justices.

All the authorities.—As to these, see sec. 299, *post.*

(Secrecy of reports. Act of 1889, s. 42, subs. (5).)

(5) All reports and particulars sent to the Commissioners under this section shall be kept by them, and shall be open to inspection only by the Commissioners and

Sec. 207 (1).

the Lord Chancellor, and by such persons as the Lord Chancellor directs.

This subsection re-enacts sec. 42, subs. (5) of the Lunacy Act 1889, and carries into effect a recommendation of the Dillwyn Committee 1878, noted under subs. (1).

Open to inspection.—As to principles on which the Lord Chancellor will act in allowing or refusing inspection, see *re H. W. Strachan*,[1] and *ante* p. 261.

Part VIII.

LICENSED HOUSES AND HOSPITALS.

Restrictions on New Licences.

Restrictions on new licences. (Act of 1889, s.56, subs. (1).)

207. (1) If the Commissioners in the case of a house within their immediate jurisdiction, or in the case of a house licensed by justices the justices, are of opinion that a house licensed for the reception of lunatics has been in all respects well conducted by the licensees, the Commissioners or justices may upon the expiration of the licence renew the licence for that house to the former licensees, or any one or more of them, or to their successors in business.

This subsection re-enacts sec. 56, subs. (1) of the Lunacy Act 1889. As to the origin and object of that section, see note to "no new licence" in subs. (6), *inf.*

The Commissioners.—Definition of, sec. 341, *post.*

"Immediate jurisdiction" of Commissioners.

Their immediate jurisdiction.—As to immediate jurisdiction of Commissioners, see sec. 208, subs. (1), and Third Schedule, *post.*

"Licensed by justices."

Licensed by justices.—As to the licensing of houses by justices, see sec. 208, subs. (2), and sec. 209, *post.*

Lunatics.—Definition of, sec. 341, *post.*

Renew.—As to the statement of the number and class of patients detained, and the copies of entries by visiting Commissioners, to be furnished on application for renewal, see rule 33 of the Rules of the Commissioners in Lunacy 1895, *post.* Wilfully to supply untrue or incorrect information on any application for a licence or a renewal is a misdemeanour (see sec. 214, *post*). As to form of renewal, see Form 20, Schedule ii., *post.* As to use of such forms, see sec. 339, *post.* A licence by the Commissioners requires to be sealed (sec. 152, subs. (1), *ante*, and sec. 216, *post*).

[1] 1895, 1 Ch. 439.

Sec. 207 (2), (3).

(Completion of transfers. Act of 1889, s. 56, subs. (2).)

(2) If on the twenty-sixth of August, one thousand eight hundred and eighty-nine, the licensees of any house had made arrangements to establish a new house for the reception of lunatics in the place of an existing house, and the Commissioners, or if the existing house was within the jurisdiction of justices the justices, are of opinion that such new house will be as well suited for the purpose as the existing house, and are also of opinion that the existing house has been in all respects well conducted, the Commissioners or justices may grant to the licensees of the existing house, or any one or more of them, a licence for the new house, and may renew the same to the original licensees, or any one or more of them, or to his or their successors in business.

This subsection re-enacts sec. 56, subs. (2) of the Lunacy Act 1889.

See notes to preceding subsection.

On the 26th of August.—This subsection is now practically spent.

New house.—As to notices to be sent on change of house to persons obtaining reception orders, and to authorities liable for maintenance, see sec. 219, *post.*

Grant . . . a licence for the new house.—As to the notices and information to be sent to the Commissioners and justices on application for a new licence, see r. 36 of the Rules of the Commissioners in Lunacy 1895, *post.* As to forms of new licence, see Forms 18 and 19, Sched. ii., *post.* As to use of such forms, see sec. 339, *post.* As to fee payable on licence for new house granted on transfer of patients from existing house, see sec. 217, subs. (4), *post.* A licence by the Commissioners requires to be sealed (see sec. 152, subs. (1), *ante*, and sec. 216, *post*).

Renew the same.—As to evidence on application for renewal, see r. 37 of the Rules of the Commissioners in Lunacy 1895, *post.* As to form of renewal, see Form 20, Sched. ii., *post.* As to use of such forms, see sec. 339, *post.*

(Substitution of houses. Act of 1889, s. 56, subs. (3).)

(3) If at any time it is shown to the satisfaction of the Commissioners or the justices, as the case may be, that it would be for the comfort and advantage of the patients in any licensed house that another house should be substituted in place thereof, the Commissioners or justices may grant

Sec. 207 (3), (4).

to the licensees of such first-mentioned house a licence in respect of such other house upon and subject to the same conditions and restrictions as may have existed in respect of the first-mentioned house.

This subsection re-enacts sec. 56, subs. (3) of the Lunacy Act 1889.

See notes to subss. (1) and (2), *sup.*

"As the case may be."

As the case may be, i.e. according as the house is, or is not, within the immediate jurisdiction of the Commissioners.

Grant . . . a licence.—See Forms 18 and 19, Sched. ii., *post.* As to use of such forms, see sec. 339, *post.* As to fee payable for licence, see sec. 217, subs. (4), *post.* A licence by the Commissioners must be under seal (see sec. 152, subs. (1), *ante*, and sec. 216, *post*). As to notices to be sent on change of house, see sec. 219, *post.*

(Joint licensees. Act of 1889, s.56, subs. (4).)

(4) In the case of joint licensees or proprietors who desire to carry on business apart from one another, if, in the opinion of the Commissioners or of the justices, as the case may be, the establishment conducted by them jointly, and also any new house which any of them desires to conduct, answers the conditions hereinbefore required for granting renewed licences, the Commissioners or justices, as the case may be, may grant to each of such licensees or proprietors renewed licences for such number of patients (not exceeding in the aggregate the number allowed by the joint licence) as such joint licensees or proprietors agree upon, or, failing their agreement, as the Commissioners or justices determine.

This subsection re-enacts sec. 56, subs. (4) of the Lunacy Act 1889.

See notes to preceding subsections.

Joint licensees . . . another.—As to where one joint licensee dies, see sec. 212, *post.*

The conditions hereinbefore required.—See subs. (1), *sup.*

May grant.—As to evidence in support of application for renewed licences, see r. 33 of the Rules of the Commissioners in Lunacy 1895, *post.* Any person who wilfully supplies untrue or incorrect information, etc., on any such application is guilty of a misdemeanour (see sec. 214, *post*).

Sec. 207 (5), (6).

(5) Where the licensee of a house is a medical man in the employment of the proprietor of such house as his manager, the licence shall be transferable or renewable to such licensee so long as he continues manager of the house, or to the proprietor, or to any other medical manager while employed by the proprietor in the place of the former manager.

(Medical licensees. Act of 1889, s. 56, subs. (5).)

This subsection re-enacts sec. 56, subs. (5) of the Lunacy Act 1889.

(6) Save as in this section provided, no new licence shall be granted to any person for a house for the reception of lunatics, and no house in respect of which there is at the passing of this Act an existing licence shall be licensed for a greater number of lunatics than the number authorised by the existing licence.

(No new license to be granted. Act of 1889, s. 56, subs. (6).)

This subsection re-enacts subs. (6) of sec. 56 of the Lunacy Act 1889.

Save as in this section provided, viz. where arrangements had been made for the establishment of a new house on the commencement of the Act (subs. (2), *sup.*), where there is transfer to a new house (subs. (3), *sup.*), and where one of several joint proprietors obtains a new licence (subs. (4), *sup.*).

No new licence shall be granted.—This section does not, however, apply to licensed houses under the Idiots Act 1886 (49 & 50 Vict. c. 25).

Sec. 56 of the Lunacy Act 1889—which this section re-enacts—was an attempt, or part of an attempt (since sec. 58 of that statute, reproduced in sec. 231, *post*, of this Act, was inspired by the same idea) to deal with the problem which had exercised the minds of lunacy reformers for a very long time as to whether private licensed houses should be continued.[1] It was in the mad-houses carried on upon the principle of private profit that the worst abuses of the old system of lunacy administration occurred, and there was a tendency to regard the interest which the keepers of such houses had in prolonging the detention of patients, and in making as much as possible out of each case, as a vice inherent in and ineradicable from the system. In time, however, this evil was very largely remedied by the Acts which provided for the visitation of all receptacles for the insane by the Commissioners in Lunacy and the visitors; and attention came to be directed to the fact that the proprietor of a licensed

Objection to private profit.

Remedied by visitation.

[1] See Report of 1859, evidence of Lord Shaftesbury, Ans. 79-82, 98, 99.

Sec. 208 (1), (2).

Incentive of licensed proprietor to cure patients.

Evidence taken by Dillwyn Committee.

Opinion of Committee.

house had a greater incentive to hasten the cure of his patients, and see to their comfort, than the paid officials of an asylum. These conflicting views were pressed with great insistence upon the Dillwyn Committee in 1878, on whose report the Lunacy Act of 1889 was based. Some of the witnesses adopted a mean between these two extremes. They considered that no alteration in the law was necessary, but that the matter had better be left to the spontaneous action of the public, and that when there was sufficient accommodation for all classes in public institutions, such as existed in Scotland, in Cornwall, and at Cheadle in Cheshire, it was possible that there would be no demand for licensed houses for the upper and middle classes. In this opinion the Committee concurred, and suggested that legislative facilities should be afforded by enlargement of the powers of magistrates or otherwise for the extension of this system.[1]

The provisions of this section and of sec. 231, *post*, are intended to carry out this recommendation. The former section at once protects vested interests and makes provision for licensed houses in the course of being established at the passing of the Act of 1889, and for the substitution of new for existing houses, and prohibits the grant of new licences. The latter deals with the registration of hospitals.

There were, on 1st January 1896, 75 licensed houses, of which 25 were metropolitan and 50 provincial. These numbers indicate a material reduction in the last ten years—in January 1886 the total number being 96; 34 metropolitan and 62 provincial. The total number of patients for whom all the houses were licensed was, on 1st January 1896, 5038 (50th Report of Commissioners in Lunacy, p. 51).

Jurisdiction of Commissioners and Justices.

Places within immediate jurisdiction of Commissioners.

208. (1) The Commissioners shall exercise the licensing jurisdiction under this Act as regards the places mentioned in the Third Schedule which are to be deemed within their immediate jurisdiction.

This subsection re-enacts sec. 14 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The Commissioners.—Definition of, sec. 341, *post*.

The licensing jurisdiction.—See sec. 207, *ante*.

The places . . . jurisdiction.—See Sched. iii., *post*. "Deemed" means taken conclusively to be (see *ante* p. 138).

(Jurisdiction of justices.)

(2) In all places not within the immediate jurisdiction of the Commissioners the justices for every county and

[1] Report, p. vi.

quarter sessions borough shall be the licensing justices, and shall at quarter or special sessions respectively have the same authority within their counties and boroughs to license houses for the reception of lunatics as the Commissioners within their immediate jurisdiction. Sec. 208 (3).

This subsection re-enacts in substance the first clause of sec. 17 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

In all places . . . Commissioners.—The places are enumerated in Sched. iii., *post.*

Justices.—Definition of, sec. 341, *post.*

County.—Definition of, sec. 341, *post.*

Quarter sessions borough.—Definition of, sec. 341, *post.* Under sec. 31 of the Act of 1845 (8 & 9 Vict. c. 100) the consent of the recorder was necessary in the case of a licence granted by borough justices. As to special sessions by borough justices, see sec. 209, *inf.* Consent of recorder when necessary, formerly.

As to inspection and report by Commissioners before grant of licence by justices to house not previously licensed, see sec. 210, *post.*

(3) A person shall not act in granting any licence if he is, or if within one year next preceding has been, interested in a licensed house.

This subsection follows the first clause of sec. 23 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Interested, i.e. pecuniarily. In sec. 165, *ante*, with reference to the disqualification of a person for the office of Chancery Visitor, the words used are "*directly or indirectly* interested." The omission of the words in italics here gives rise to some difficulty in the interpretation of this subsection. It is thought, however, that either direct or indirect interest, as *e.g.* that of a physician to a licensed house at a fixed salary, in the success of the house, would operate as a disqualification. "Interested."

209. For the purposes of this Part of this Act the justices of every borough shall assemble in special sessions at such times as the quarter sessions for the borough are held. Borough justices to hold special sessions.

This section re-enacts the third clause of sec. 115 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to sec. 208, subs. (2).

Sec. 210.

Conditions on which Licences granted.

Before grant of a new licence by justices, Commissioners to inspect and report.

210. Before a licence is in any case provided for by this Act granted for a house not within the immediate jurisdiction of the Commissioners and not previously licensed, one or more of the Commissioners shall by inspection ascertain whether the house and its appurtenances are suitable for the reception of lunatics, and the Commissioners shall report thereon to the clerk of the peace of the county or borough, and the report shall be received and considered by the justices.

This section is based on sec. 14 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

The immediate jurisdiction.—As to places within, see Sched. iii., *post.*

Not previously licensed.—See form of such licence, Form 19, Sched. ii., *post.* As to notices, etc., to be sent to the Commissioners and the clerk of the peace on application for licence, see r. 36 of the Rules of the Commissioners 1895, *post.* As to fees, see sec. 217, *post.*

The report.—As to protection of persons making, see sec. 330, *post.* Wilful misstatement of material fact in, a misdemeanour (sec. 317, subs. (2), *post*).

Licensee to reside.

211. A licence shall not be granted unless the licensee or one of the licensees undertakes to reside in the house.

This section re-enacts in substance sec. 2 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

A licence.—Whether granted by the Commissioners (sec. 208, subs. (1), *ante*), or by justices (sec. 208, subs. (2), *ante*).

One of the licensees.—As to licences to joint licensees, see sec. 212, *inf.*

Obligation of residence in cases of transfer.

The obligation of residence is included among the obligations transferred in cases of transfer (see sec. 218, subs. (1), *post*).

Licence to joint licensees. (Act of 1889, s. 57, subs. (6).)

212. In the case of a licence granted to two or more persons, if before the expiration of the licence any of such persons dies leaving the others surviving, and one of the survivors has undertaken or within ten days after the death gives to the Commissioners or the justices who granted the

licence a written undertaking to reside on the licensed premises, the licence shall remain in force and have the same effect as if granted to the survivors. Sec. 213.

This section re-enacts sec. 57, subs. (6) of the Lunacy Act 1889, amending the proviso to sec. 39 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The Commissioners.—As to grant of licences by, see sec. 208, subs. (1), *ante*.

The justices.—As to grant of licences by, see sec. 208, subs. (2), *ante*.

Has undertaken, i.e. on the grant of the original licence.

Within ten days.—The day of the death is excluded. "Days" means all days, Sundays, etc., included (see *ante* p. 117). "Within ten days."

Shall remain in force.—Otherwise it will expire on the expiration of the time limited by the section.

213. No addition or alteration shall be made to any licensed house or the appurtenances without the previous consent in writing of the Commissioners, and also of two of the visitors in the case of a house within the jurisdiction of visitors. Notice of additions and alterations.

This section is based on sec. 26 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

No addition, etc.—As to notices of proposed additions and plans to be sent to Commissioners, and in the case of a house licensed by justices to the clerk of the peace, see r. 39 of the Rules of the Commissioners 1895, *post*.

Any licensed house.—Whether licensed by the Commissioners (sec. 208, subs. (1), *ante*), or by justices (sec. 208, sub. (2), *ante*).

The visitors.—As to visitors of licensed houses, see sec. 177, *ante*.

214. If any person, for the purpose of obtaining a licence or the renewal of a licence for a house for the reception of lunatics, wilfully supplies to the Commissioners or justices any untrue or incorrect information, plan, description, statement, or notice, he shall be guilty of a misdemeanour. Untrue statement a misdemeanour.

This section re-enacts sec. 27, and the last clause of sec. 29 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Wilfully supplies.—This provision is necessary, because sec. 317, *post*, applies only to (1) petitions, statements, particulars, and recep- "Wilfully supplies."

Sec. 215 (1), (2).

tion orders (subs. (1)); and (2) medical and other certificates and statements, or reports as to bodily or mental condition (subs. (2)).

Why provision necessary.

As to prosecutions, see secs. 325-328, *post*.

As to punishment of misdemeanour, see note to sec. 7, subs. (4), *ante*.

As to protection of persons acting in pursuance of the Act, see sec. 330, *post*.

Information . . . notice.—As to these, see rr. 36, 37 of the Rules of the Commissioners 1895, *post*.

A copy of licence granted by justices to be sent to the Commissioners.

215. (1) Within seven days after the grant of a licence by the justices of a county or borough the clerk of the peace of the county or borough shall send a copy thereof to the Commissioners.

This subsection re-enacts in substance the first clause of sec. 28 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

"Within seven days."

Within seven days.—Under the corresponding provision in the Act of 1845 (*v. sup.*) the period was fourteen days. The day of the grant is excluded (see *ante* p. 117). "Days" means all days, Sundays, etc., included.

The grant . . . borough.—See sec. 208, subss. (2) and (3), *ante*, as to such grants.

(2) Any clerk of the peace omitting to send such copy within such time shall for every such omission be liable to a penalty not exceeding forty shillings.

This subsection re-enacts the second clause of sec. 28 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See preceding subsection and notes.

"Omitting."

Omitting.—Whether wilfully or by inadvertence.

A penalty.—As to proceedings, see sec. 326, *post*.

As to evidence upon prosecution, see sec. 329, *post*.

Stamps on licences.

216. Licences and renewed licences shall be stamped with a ten shilling stamp, and shall be under the seal of the Commissioners, if granted by them, and if by any justices under the hands of three or more of them in quarter or special sessions assembled, and shall be granted for such period, not exceeding thirteen months, as the Commissioners or justices, as the case may be, think fit.

This section re-enacts sec. 30 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), as amended by sec. 15 of the Lunacy Act 1855 (18 & 19 Vict. c. 105).

Sec. 217 (1), (2).

Stamped.—As to charges for licences, see sec. 217, *inf.*

Seal of the Commissioners.—See also sec. 152, subs. (1), *ante.*

If granted by them.—See sec. 208, subs. (1), *ante.*

If by any justices.—See sec. 208, subss. (2) and (3), *ante.*

For such period.—As to revoking of licences, see sec. 221, *post.*

Detention of lunatics after revocation or expiration, a misdemeanour (sec. 222, *post*).

As to continuation of powers of Commissioners and visitors after revocation and expiration, so long as any lunatics are detained, see sec. 223, *post.*

Charge for licences.

217. (1) For every licence there shall be paid to the secretary of the Commissioners, or to the clerk of the peace, according as the licence is granted by the Commissioners or justices (exclusive of the stamp), the sum of ten shillings for every patient not being a pauper, and the sum of two shillings and sixpence for every patient being a pauper.

This subsection re-enacts the first part of the first clause of sec. 32 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The secretary of the Commissioners.—As to, see sec. 154, *ante.*

Fees payable to the secretary of the Commissioners under this subsection are, under sec. 7 of 17 & 18 Vict. c. 94, from time to time to be paid into the Exchequer, and to be carried to the Consolidated Fund, and applied in aid or diminution of charges borne upon the annual votes of Parliament or the Consolidated Fund; or under sec. 1 of 31 & 32 Vict. c. 9, if the Treasury so directs, to be paid over to the Exchequer to the credit of the Consolidated Fund in such manner as the Treasury may from time to time determine.

The clerk of the peace.—As to application of such fees, see sec. 224, *post.*

According as . . . justices.—See sec. 208, and notes, *ante.*

Exclusive of the stamp.—See sec. 216, *sup.*

Pauper.—Definition of, sec. 341, *post.*

(2) If the total amount of such sums of ten shillings and two shillings and sixpence does not amount to fifteen pounds, then so much more shall be paid as makes up fifteen pounds.

This subsection re-enacts the second part of the first clause of sec. 32 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

So much more . . . fifteen pounds.—As to reduction where licence is granted for less than thirteen months, see subs. (3), *inf.*

Sec. 217 (3)-(5).

(3) If the period for which a licence is granted is less than thirteen months, the Commissioners or the justices may reduce the payment to any sum not less than five pounds.

This subsection re-enacts the proviso to sec. 32 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Less than thirteen months.—See sec. 216, *ante.*

The Commissioners.—As to grant of licences by, see sec. 208, subs. (1), *ante.*

Or the justices.—As to grant of licences by, see sec. 208, subss. (2) and (3), *ante.*

Reduce, i.e. from £15. See subs. (2), *sup.*

(4) The payment for a licence for a new house granted upon the transfer of patients from a licensed house shall not be less than one pound (exclusive of the stamp).

This subsection is based on sec. 40 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The transfer.—As to transfer by way of substitution, see sec. 207, subss. (2), (3), (4), (5), *ante.*

As to transfer on incapacity or death of person licensed, see sec. 218, *inf.* Notice on transfer by way of substitution, see sec. 219, *post.*

Exclusive of the stamp.—See sec. 216, *ante.*

(5) No licence shall be delivered until the sum payable for the same has been paid.

This subsection re-enacts the second clause of sec. 32 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The sum payable.—See secs. 216 (stamp) and 217 (fees), *ante.*

Incapacity or death of the person licensed.

218. (1) If a person to whom a licence has been granted becomes by sickness or other sufficient reason incapable of keeping the licensed house, or dies before the expiration of the licence, the Commissioners or any three justices for the county or borough, as the case may be, may, if they think fit, by writing endorsed on the licence under the seal of the Commissioners or under the hands of such three justices, transfer the licence, with all the privi-

leges and obligations annexed thereto, for the term then unexpired, to such person as the Commissioners or justices approve. Sec. 218 (1)-(3).

This subsection re-enacts the first clause of sec. 39 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The expiration of the licence.—The duration of the licence is not to exceed thirteen months (sec. 216, *ante*).

The Commissioners . . . may be.—See sec. 208, *ante.*

Endorsed.—And see also sec. 152, subs. (1), *ante*, as to the sealing of such endorsements.

Transfer.—See sec. 207, subss. (2), (3), (4), (5), (6), *ante*, as to substitution of one house for another. As to payment on transfer, see sec. 217, subs. (4), *sup.* As to notice on change of house, see sec. 219, *post.* As to revocation of licences, see sec. 221, *post.*

Obligations annexed thereto.—The obligation of residence is included among the obligations transferred (see sec. 211, *ante*).

(2) Where a licence is transferred by justices of a county or borough under this section, the clerk of the peace of the county or borough shall within three days after the date of the instrument of transfer send a copy thereof to the Commissioners. (Copy of endorsement, Act of 1889, s.57, subs.(7).)

This subsection re-enacts sec. 57, subs. (7) of the Lunacy Act 1889.

Within three days.—See note to sec. 215, subs. (1), *ante.*

A copy.—It seems that a copy of the endorsement is sufficient, if the licence can be identified thereby. Sufficiency of.

(3) A clerk of the peace who makes default in performing the duty imposed upon him by this section, shall, for each day during which the default continues, be liable to a penalty not exceeding forty shillings. (Penalty for default. Act of 1889, s.57, subs.(8).)

This subsection re-enacts sec. 57, subs. (8) of the Act of 1889.

See notes to preceding subsection.

Default.—Whether wilful or inadvertent; and see sec. 215, subs. (2), *ante.*

A penalty.—As to proceedings, see sec. 326, *post.*

As to evidence upon prosecution, see sec. 329, *post.*

219. In cases in which under this Act a house not previously licensed is to be substituted for a licensed house, Notice on change of house.

Sec. 219.

unless the substitution is occasioned by fire or tempest, seven clear days' notice of the intended substitution shall be sent to the person on whose petition the reception order of each private patient was made, or to the person by whom the last payment on account of the patient was made, and to the authority liable for the maintenance of each pauper patient.

This section re-enacts in substance the last clause of sec. 40 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

In cases in which . . . house.—See sec. 207, subs. (3), *ante.*

Seven clear days.—The terminals are excluded.[1] "Days" means all days, Sundays, etc., included.

The person on whose petition.—See secs. 5 and 48, *ante.* The original order and certificates remain in force notwithstanding the removal (see sec. 37, subs. (2), *ante*).

The authority liable, etc.—See secs. 289, 290, *post.* There was no clause corresponding to this in sec. 40 of the Act of 1845.

Pauper patient.—See definition of pauper, sec. 341, *post.*

Penalty for infringing licence.

220. If a licensee receives into his licensed house any patients beyond the number specified in the licence, or fails to comply with the regulations of the licence as to the sex of the patients or the class of patients, he shall for each patient received contrary to his licence forfeit fifty pounds.

This section re-enacts sec. 17 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

Forfeit fifty pounds.—As to proceedings, see sec. 326, *post.*

As to protection of persons putting the Act in force, see sec. 330, *post.*

Power of revocation and prohibition of renewal of licences.

221. (1) If a majority of the justices of a county or quarter sessions borough in quarter or special sessions assembled recommend to the Lord Chancellor that any licence granted by the justices for such county or borough be revoked, or if the Commissioners recommend to the Lord Chancellor that any licence granted either by them or by any justices be revoked or if granted by any justices

[1] *Liffin* v. *Pitcher*, 1842, 1 Dowl., N.S., 767.

be not renewed, the Lord Chancellor may, by an instrument under his hand and seal, revoke or prohibit the renewal of the licence. Sec. 221 (1)-(4).

This subsection re-enacts part of the first clause of sec. 41 and the first clause of sec. 42 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), *post*.

Justices.—Definition of, see sec. 341, *post*.

County.—Definition of, see sec. 341, *post*.

Quarter sessions borough.—Definition of, see sec. 341, *post*.

The Lord Chancellor.—See definition of in sec. 12 of the Interpretation Act 1889 (52 & 53 Vict. c. 63), cited *ante* p. 138.

(2) A revocation of a licence shall take effect at a date to be named in the instrument of revocation, not more than two months from the time when a copy or notice thereof has been published in the *London Gazette*. (Date of revocation.)

This subsection re-enacts part of the first clause of sec. 41 and of the second clause of sec. 42 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

A revocation.—As to the effect of the revocation, see secs. 222, 223, *post*.

Not more than two months from.—The day of publication is excluded (see *ante* p. 117). "Month" means calendar month (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3). Day of publication excluded.

(3) A copy or notice of the instrument of revocation shall be published in the *London Gazette*, and shall, before publication, be transmitted to the manager of the licensed house, or shall be left at the licensed house. (Notice of.)

This subsection re-enacts the second clause of sec. 41 and the third clause of sec. 42 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Manager.—See definition of in sec. 341, *post*.

(4) In case of any such revocation or prohibition to renew being recommended to the Lord Chancellor, notice thereof in writing shall, seven clear days previously to the transmission of such recommendation to the Lord Chancellor, be given to the manager, or left at the licensed house.

Sec. 222.

This subsection re-enacts the provisoes to secs. 41 and 42 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Seven clear days.—The terminal days are excluded.[1] "Days" means all days, Sundays, etc., included (see *ante* p. 117).

Detention of lunatics after expiration or revocation of a licence a misdemeanour.

222. If after the lapse of two months from the expiration or revocation of the licence of any house there are in the house two or more lunatics, every person keeping the house or having the care or charge of the lunatics therein, shall be guilty of a misdemeanour.

This section re-enacts sec. 18 of the Lunacy Act 1855 (18 & 19 Vict. c. 105).

Months.—See notes to sec. 221, subs. (2), *sup.*

Expiration.—A licence is not granted for more than thirteen months (see sec. 216, *ante*).

Revocation.—See sec. 221, *sup.*

Lunatics.—Definition of "lunatic," see sec. 341, *post.*

Misdemeanour.—As to prosecution for, see secs. 325, 328, *post.*

As to punishment, see note to sec. 7, subs. (4), *ante.*

As to protection of persons acting under the Act, see sec. 330, *post.*

Powers to continue so long as any lunatics detained.

223. The powers of the Commissioners and visitors with reference to any licensed house and the patients therein, and all powers and provisions of this Act having reference to the discharge, removal, and transfer of the patients, shall, after the expiration or revocation of the licence, continue in force so long as any patients are detained therein as lunatics.

This section re-enacts sec. 9 of the Lunacy Act 1855 (18 & 19 Vict. c. 105).

The powers of the Commissioners and visitors.—See secs. 191-197, *ante*; and as to special visits, sec. 204, *ante.*

The discharge.—See secs. 72-76, 78, 82, *ante.*

The removal.—See secs. 58, 59, 61, 70, 71, *ante.*

The transfer.—See sec. 207, subs. (3), and secs. 218, 219, *ante.*

The expiration or revocation.—See notes to sec. 222, *sup.*

Lunatics.—Definition of "lunatic," sec. 341, *post.*

Application of moneys received for licences by clerks of the peace.

224. (1) All moneys received for licences granted by any justices shall be paid by the clerk of the peace for the county or borough into the county or borough fund.

[1] *Liffin* v. *Pitcher*, 1842, 1 Dowl., N.S., 767.

Sec. 224 (1)-(4).

This subsection adapts sec. 36 of the Lunacy Act 1845 (8 & 9 Vict. c. 100) to the changes introduced by the Local Government Act 1888 (51 & 52 Vict. c. 41).

All moneys received for licences.—See secs. 216, 217, *ante.*

County.—Definition of, sec. 341, *post.*

Borough.—Definition of, sec. 341, *post.*

(2) The clerk of the peace for every county or borough shall keep an account of all moneys received and paid by him as aforesaid, and of all moneys otherwise received or paid by him in the execution of this Act.

This subsection re-enacts the first clause of sec. 37 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsection.

An account.—See subs. (3), *inf.*

All moneys otherwise received . . . Act.—Viz. penalties recovered (see sec. 326, *post*), and expenses paid to witnesses (sec. 332, subs. (4), *post*).

(Provisions as to audit.)

(3) Such account shall be made up to the thirty-first day of March in each year, or to such other date as the Local Government Board appoint, and shall be signed by two at least of the visitors for the county or borough; and in the case of the clerk of the peace of a county, shall be audited by the same person, in the same manner, and with the same incidents and consequences as the accounts of officers of the county council under the Local Government Act 1888.

51 & 52 Vict. c. 41.

This subsection adapts the second clause of sec. 37 of the Lunacy Act 1845 (8 & 9 Vict. c. 100) to the changes made by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Such account.—See subs. (2), *sup.*

The visitors.—As to appointment of, see sec. 177, subs. (1), *ante.*

Audited, etc.—The provisions of the Local Government Act 1888, with reference to the accounts of county councils, are set out in the notes to sec. 279, *post.*

225. (1) The justices of every county or borough in quarter or special sessions may order such sums as may be reasonable for payment of the remuneration or salary of

Sec. 225 (1)-(3).

Balance of payments over receipts may be paid out of the funds of the county or borough.

the visitors and their clerk, and of all other expenses incurred by or under the authority of the justices or visitors in the execution of this Act, to be paid to the clerk of the peace of the county or borough out of the county or borough fund.

This subsection re-enacts the second clause of sec. 38 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Justices.—Definition of, sec. 341, *post.*

County.—Definition of, sec. 341, *post.*

Quarter sessions.—Definition of, sec. 341, *post.*

Visitors.—The reference is to medical visitors (see sec. 177, subs. (12), *ante*).

Their clerk.—See sec. 178, subs. (5), *ante.*

All other expenses.—See sec. 182, *ante.*

(2) Every such sum shall be paid out of the county or borough fund by the treasurer thereof, and shall be allowed in his accounts, on the authority of the order by the justices for the payment thereof.

This subsection re-enacts the third clause of sec. 38 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See preceding subsection and notes.

(3) Every sum ordered to be paid by justices of a county under this section shall be subject to the sanction of the standing joint committee of the county council and quarter sessions as provided by section sixty-six of the Local Government Act 1888.

This subsection was first enacted in the Act of 1890.

See preceding subsections and notes.

Sec. 66 of the Local Government Act (51 & 52 Vict. c. 41) is as follows:—

"All costs incurred by the quarter sessions or the justices out of session of a county, and all costs incurred by any justice, police officer, or constable, in defending any legal proceedings taken against him in respect of any order made, or act done, in the execution of his duty as such justice, police officer, or constable, shall, to such amount as may be sanctioned by the standing joint committee of the county council and quarter sessions, and, so far as they are not otherwise provided for, be paid out of the county fund of the county, and the council of the county shall provide for such payment accordingly."

Management of Licensed Houses.

226. The Commissioners, with the sanction of a Secretary of State, may make regulations for the government of any licensed house; and such regulations of the Commissioners, or a copy thereof, shall be transmitted by their secretary to the manager of every licensed house to which the same relate, and shall be observed therein.

Commissioners may make regulations for the government of licensed houses.

This section re-enacts sec. 31 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

The Commissioners.—Definition of, sec. 341, *ante.*

Secretary of State.—Definition of, see *ante* p. 169.

Secretary of State.

Regulations.—See Rules of the Commissioners in Lunacy 1895, *post.*

Secretary.—As to the secretary to the Commissioners in Lunacy, see sec. 154, *ante.*

Shall be observed.—As this section gives the Commissioners power to make regulations for the management of licensed houses, the breach of any regulation so made is an indictable offence punishable as a misdemeanour at common law.[1]

227. There shall be hung up in some conspicuous part of every licensed house a copy of the plan given to the Commissioners or justices on applying for the licence.

Plans to be hung up.

This section re-enacts the first clause of sec. 66 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The plan . . . licence.—See rules 36 (3) and 39 (1) and (2) of the Rules of the Commissioners 1895, *post.*

228. (1) In every house licensed for one hundred patients, or more, there shall be resident as the manager and medical officer thereof a medical practitioner.

Provision for residence and visits of medical attendants.

This subsection re-enacts the first clause of sec. 57 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Manager.—Definition of, see sec. 341, *post.*

Medical officer.—Definition of, see sec. 341, *post.*

Medical practitioner.—Definition of, see sec. 341, *post.*

[1] Cp. *R.* v. *Harris*, 1791, 4 T.R. 202; *Reg.* v. *Walker*, 1875, L.R. 10 Q.B. 355.

Sec. 228 (2)-(5).

(2) Every house licensed for less than one hundred and more than fifty patients (in case the house is not kept by or has not a resident medical practitioner) shall be visited daily by a medical practitioner.

This subsection re-enacts the second clause of sec. 57 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to subs. (1).

(3) Every house licensed for less than fifty patients (in case the house is not kept by or has not a resident medical practitioner) shall be visited twice a week by a medical practitioner.

This subsection re-enacts the third clause of sec. 57 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

No provision for case of house licensed for fifty patients.

It is rather singular that there is no provision for the case of a house licensed for fifty patients.

(4) The visitors of any licensed house may direct that such house, and the Commissioners may direct that any licensed house shall be visited by a medical practitioner at any other time or times, not being oftener than once a day.

This subsection re-enacts the proviso to sec. 57 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

The visitors.—See sec. 177, *ante.*

The Commissioners.—See sec. 150, *ante.*

(5) When a house is licensed to receive less than eleven lunatics, any two of the Commissioners or any two of the visitors of such house may, if they think fit, by any writing under their hands, permit the house to be visited by a medical practitioner at such intervals more distant than twice a week as the Commissioners or visitors appoint, but not at a greater interval than once in every two weeks.

This subsection re-enacts sec. 58 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to preceding subsections.

Sec. 229 (1).

Boarders in licensed houses. (Act of 1889, s. 39, subs. (1).)

229. (1) The manager of a licensed house may, with the previous consent in writing of two of the Commissioners, or, where the house is licensed by justices, of two of the justices, receive and lodge as a boarder for the time specified in the consent any person who is desirous of voluntarily submitting to treatment; after the expiration of which time (unless any further consent is in like manner given for the extension thereof) he shall be discharged. The manager of a licensed house may also, with such previous consent as aforesaid, receive and lodge as a boarder, for the time specified in the consent, any relative or friend of a patient.

This subsection re-enacts sec. 39, subs. (1) of the Lunacy Act 1889, a section superseding sec. 6 of the Lunacy Act 1853 (16 & 17 Vict. c. 96), as amended by sec. 18 of the Lunacy Act 1862 (25 & 26 Vict. c. 111). Under the two last-mentioned sections admission as voluntary boarders into licensed houses was restricted to persons who had already been patients under certificates. The Dillwyn Committee thought this restriction unnecessary, but recommended that all cases of such admission should be reported to the Lunacy Commissioners within twenty-four hours (Report, 1878, p. vi.). With reference to this suggestion the Commissioners in Lunacy, in their 33rd Annual Report, at p. 137, said, "The system of admitting boarders has answered well. We are quite prepared to extend it to any person who at any time has been an inmate of any institution for the insane, or has been a single patient (either as a lunatic so found, or under certificates). But we do not recommend the indiscriminate admission of persons never certified as insane. The following objections may be sufficient:—

Objections to admission of boarders without being certified.

"1. The fear of attempts at evasion of the law by introducing as boarders persons who ought to be under certificates.

"2. The fear of the introduction of mere drunkards.

"3. The fear of crowding the house to the inconvenience of the insane patients.

"The previous consent of ourselves or the visitors should remain a *sine quâ non*. Notice of admission is thus scarcely necessary."

Notice of admission has now, however, been prescribed by sec. 20 of the Act of 1891 in the case of licensed houses not within the immediate jurisdiction of the Commissioners and registered hospitals.

Manager.—Definition of, sec. 341, *post.*

Previous consent.—See form of consent, Form 14, Sched. ii., *post.*

Commissioners.—Definition of, sec. 341, *post.*

Sec. 229 (2).

The house . . . justices.—As to licences by justices, see sec. 208, subss. (2) and (3), *ante*.

Receive . . . boarder.—The manager of every licensed house is required to keep a register of voluntary boarders in the prescribed form (see rr. 1, 6, and 19 of the Rules of the Commissioners 1895, *post*).

Act of 1891, sec. 20. Notice of reception of boarders into licensed houses and hospitals.

20. Where a boarder is received into a licensed house not within the immediate jurisdiction of the Commissioners in Lunacy, or into a registered hospital, notice of his reception shall be given to the Commissioners in Lunacy within twenty-four hours of his reception by the manager of the licensed house or hospital into which such boarder has been received.

If any manager fails to comply with the provisions of this section he shall, for each day or part of a day during which the default continues, be liable to a penalty not exceeding five pounds.

If the Commissioners after inquiry are of opinion that the mental state of any boarder received into a licensed house or hospital is such as to render him unfit to remain as a boarder, they may order the manager of the licensed house or hospital either to remove such boarder or to take steps to obtain an order for his reception as a patient into the licensed house or hospital.

Any manager failing to comply with an order of the Commissioners in Lunacy made pursuant to this section shall, for each day during which the default continues, be liable to a penalty not exceeding five pounds.

The immediate jurisdiction.—See sec. 208, subs. (1), *ante*, and Fourth Schedule, *post*.

Hospital.—Definition of, sec. 341, *post*. As to registration of, see sec. 231, *post*.

Notice of his reception.—See general note to sec. 229, subs. (1), *sup*.

If any manager . . . pounds.—As to prosecutions, see secs. 325, 326, *post*; evidence on prosecution, sec. 329, *post*.

An order . . . patient.—As to reception orders, see secs. 4, 5, *et seq.*, *ante*.

Any manager . . . pounds.—See notes to "if any manager," etc., *sup*.

(Act of 1889, s. 39, subs. (2).)

(2) The consent of the Commissioners or justices, as the case may be, shall be given only upon application to them by the intending boarder.

Sec. 229 (3)-(6).

This subsection re-enacts section 39, subs. (2) of the Lunacy Act 1889.

See notes to subs. (1), *sup.*

Application. — Applications to the Commissioners should be directed to—

THE SECRETARY,
Commissioners in Lunacy,
19 Whitehall Place,
London, S.W.

(3) The total number of patients and boarders in a licensed house shall at no one time exceed the number of patients for which the house is licensed. (Act of 1889, s. 39, subs. (3).)

This subsection re-enacts in substance sec. 39, subs. (3) of the Lunacy Act 1889 (52 & 53 Vict. c. 41).

Licensed.—As to hospitals see sec. 231, subs. (8), *post.*

(4) Every boarder shall, if required, be produced to the Commissioners and visitors respectively on their respective visits. (Act of 1889, s. 39, subs. (4).)

This subsection re-enacts sec. 39, subs. (4) of the Lunacy Act 1889.

If required, i.e. by the visiting Commissioners or visitors.

The register of voluntary boarders (as to which see rr. 1 (2) and 6 of the Rules of the Commissioners in Lunacy 1895, *post*) is to be laid by the manager before the visiting Commissioners or visitors at each visit (see sec. 196, *ante*).

As to penalty for obstructing the Commissioners or visitors, see sec. 321, subs. (1), *post.*

(5) A boarder may leave the licensed house in which he is a boarder upon giving to the manager thereof twenty-four hours' notice in writing of his intention so to do. (Act of 1889, s. 39, subs. (5).)

This subsection re-enacts sec. 39, subs. (5) of the Lunacy Act 1889.

(6) If any person is not allowed to leave the licensed house in which he is a boarder after the expiration of twenty-four hours' notice to the manager thereof of his intention so to do, he shall be entitled to recover from (Act of 1889, s. 39, subs. (6).)

Sec. 230.

the manager ten pounds as liquidated damages for each day or part of a day during which he is detained.

This subsection re-enacts sec. 39, subs. (6) of the Lunacy Act 1889.

Entitled to recover . . . detained.—In any such action the provisions of the Public Authorities Prosecution Act 1893 (56 and 57 Vict. c. 61), sec. 1 (cited in notes to sec. 331, *post*), will now apply.

Hospitals.

Hospitals to have a resident medical attendant.

230. Every hospital for the reception of lunatics shall have a medical practitioner resident therein as the superintendent and medical officer thereof.

This section re-enacts the second clause of sec. 43 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Hospital.—Definition of, see sec. 341, *post*.

Provisions for registration of hospitals in which lunatics are received. (Act of 1889, s. 58, subs. (1).)

231. (1) When application is made for the registration of a hospital for the reception of lunatics, the Commissioners may depute any one or more members of their body, or may employ such person or persons as they think fit, to inspect the hospital and report to them thereon.

This subsection re-enacts sec. 58, subs. (1) of the Lunacy Act 1889.

Application.—Applications should be addressed to—

THE SECRETARY,
Commissioners in Lunacy,
19 Whitehall Place,
London, S.W.

The application must be accompanied by the plans and information specified in r. 39 of the Rules of the Commissioners 1895, *post*.

Registration.—The Dillwyn Committee, whilst not pronouncing either for or against the continuance of licensed houses, advocated the extension of institutions of the character of the present registered hospitals. With reference to this subsection the Commissioners in Lunacy, in their 33rd Annual Report (at p. 131), made the following remarks, which, as they have formed the basis of many of the provisions of the Act of 1890, deserve to be quoted *in extenso*:—

"While of opinion that for the reception of the richer class of patients licensed houses under proper management are not unsuitable, and will continue to find favour with the friends of such patients,

Sec. 231 (1).

rather than *quasi*-public institutions, we are well aware that for persons of small means, and for the class removed a degree or two above the mechanic paid by weekly wages, an increase in the number of public institutions for the insane, adequately supported, would be a great boon. The Select Committee (*i.e.* the Dillwyn Committee) appear to think that establishments of this kind might be provided, in the first instance, by a compulsory charge on the county rate, as in the case of asylums. It is impossible for us to say whether or no such a provision would find favour with Parliament or with the country; but we feel that any extension of the registered hospital system on its present basis must be accompanied by stricter provisions than now exist both as to foundation and as to management. While acknowledging the advantages which many of the existing lunatic hospitals offer, and while making no charges against the present management of any of them, for, as a rule, it is very good, we think that it is not too much to say that any one of these institutions, under the existing law, and in the hands of a weak committee, might easily be worked so as to become, instead of a philanthropic and charitable foundation, an establishment maintained mainly for the personal benefit of the resident staff, subject to none of the control exercised by Commissioners and justices over the proprietor of a licensed house. To obviate these objections, and others which have from time to time arisen, we would suggest several provisions, of which the following is a summary :—

"(*a*) All hospitals where lunatics are received should be registered as at present, but applications for registration should contain a statement of the nature of the proposed hospital; who are the founders; what persons, and by whom appointed, are to form the governing body; what class of patients, and at what average payments, are to be received.

"(*b*) Plans of the building and estate should be deposited in our office [cp. r. 39 of the Rules of the Commissioners in Lunacy 1895, *post*].

"(*c*) Prior to registration the premises should be inspected, and a report thereon made to our Board [sec. 231, subs. (1)].

"(*d*) Registration should be, primarily, a matter for the discretion of this Board, and should not be compulsory, as at present[1] [sec. 231, subs. (2)].

"(*e*) Should the Board decline to register the hospital, a statement of their reasons should be laid before the Secretary of State, who should decide absolutely whether the certificate, presently referred to, is to issue or not [section 231, subs. (2)].

"(*f*) If the Board is satisfied with the constitution of the hospital and the building, etc., or is directed by the Secretary of State to register, a provisional certificate of registration

[1] *i.e.* under sec. 43 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Sec. 231 (1), (2)

should be issued, to be valid for six months, or until approval by the Secretary of State of the regulations to be proposed, as at present, by the governing body. During currency of the provisional certificate, the governing body to be at liberty to receive patients [sec. 231, subss. (3), (4), (5), (7)].

"(*g*) On approval of the regulations, a complete certificate of registration to issue [sec. 231, subs. (6)].

"(*h*) Within three months of the passing of the Act, all hospitals, except Bethlehem, ought, we think, to deposit plans of land, of whatever tenure, occupied by the governing body, and on any new purchase or hiring of land, fresh plans should be deposited [rr. 39, 41 of the Rules of the Commissioners in Lunacy 1895, *post*]. No building in the occupation of the governing body should be deemed part of the hospital for any purpose connected with the care and treatment of patients, unless the same be situate wholly upon some part of the land of which plans are deposited. The reception of patients in any buildings not so situate should be a misdemeanour [sec. 233, *post*]. The superintendent and all others concerned in taking charge should then be liable to the same penalties as persons receiving lunatics in an unlicensed house [sec. 315, subs. (1), *post*].

"(*i*) The accounts of hospitals, audited by a public accountant, should be printed annually, and a copy sent to us, together with a list of the names and addresses of members of the governing body, and principal officers, medical or otherwise [sec. 234, *post*, and r. 42 of the Rules of the Commissioners in Lunacy, 1895, *post*].

"(*k*) Our Board should have power, with the previous consent in writing of the Secretary of State, given upon a representation from the Board, and after such inquiries as the Secretary of State might please, in case of wilful neglect of, or disobedience to, the regulations, to prohibit by sealed order the further reception of patients for a period not exceeding six months. At the end of that time, further power should exist, with like consent, to order the hospital to be closed [sec. 237, subss. (3)-(5), *post*].

"(*l*) No person directly or indirectly concerned in supplying the hospital with goods of any kind, and no medical officer thereof, should be a member of the governing body" [sec. 236, *post*].[1]

(Act of 1889, s.58, subs.(2).)

(2) If the Commissioners are of opinion that the hospital ought not to be registered for the reception of

[1] Cp. also 50th Report of Commissioners, p. 33. The number of registered hospitals is practically stationary at about 14 (*ib.*).

lunatics, they shall make a written report to a Secretary of State, stating the reasons for such opinion, and the Secretary of State shall thereupon finally determine whether the hospital ought to be registered or not. Sec. 231 (3)-(5).

This subsection re-enacts sec. 58, subs. (2) of the Lunacy Act 1889.

If . . . report.—See clause (*d*) of the quotation from the Commissioners' 33rd Report in notes to subs. (1), *sup.*

Secretary of State.—See definition of, cited *ante* p. 169.

Stating the reasons.—See clause (*e*) quotation from Commissioners' Report, *sup.*

(3) If the Commissioners are of opinion, or a Secretary of State determines, that the hospital ought to be registered, the Commissioners shall issue a provisional certificate of registration. (Act of 1889, s. 58, subs. (3).)

This subsection re-enacts sec. 58, subs. (3) of the Lunacy Act 1889 (52 & 53 Vict. c. 41).

A provisional certificate.—See clause (*f*) of 33rd Report, *sup.*

(4) A provisional certificate shall be valid for six months from the date of its issue, and for such extended time as the Commissioners allow, unless before its expiration it is superseded by a complete certificate of registration. (Act of 1889, s. 58, subs. (4).)

This subsection re-enacts sec. 58, subs. (4) of the Lunacy Act 1889.

See note to subs. (4), *sup.*

Months.—"Month" means calendar month (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3).

From.—The day of the date of issue is excluded (*ante* p. 145, note 1).

A complete certificate.—See clause (*g*), *sup.*

(5) Within three months from the date of the provisional certificate, the managing committee of the hospital shall frame regulations for the hospital, and shall submit the same to a Secretary of State for approval. (Act of 1889, s. 58, subs. (5).)

Sec. 231 (6)-(9).

Act of 1891, sec. 12. Hospitals may alter regulations.

12. The managing committee of every hospital may, with the approval of a Secretary of State, alter the regulations of the hospital.

Subs. (5) of sec. 231 re-enacts sec. 58, subs. (5) of the Lunacy Act 1889.

See note to subs. (4).

Date of provisional certificate included.

Within three months from.—The date of the provisional certificate is included. See notes to subs. (4), *sup.* "Month" means calendar month.

Regulations.—See sec. 232, *post.*

A Secretary of State.—See definition of, cited p. 169.

(Act of 1889, s. 58, subs. (6).)

(6) Upon approval of the regulations by a Secretary of State, the Commissioners shall issue a complete certificate of registration, and shall specify therein the total number of patients of each sex who may be received in the hospital.

This subsection re-enacts section 58, subs. (6) of the Lunacy Act 1889.

See notes to subs. (1) of this section.

(Act of 1889, s. 58, subs. (7).)

(7) As from the date of a provisional certificate lunatics may be received in the hospital, but if no complete certificate of registration is granted, then no lunatic shall be received or detained in the hospital after the expiration of the provisional certificate.

This subsection re-enacts sec. 58, subs. (7) of the Lunacy Act 1889.

See notes to subs. (4), *sup.*

(Act of 1889, s. 39, subs. (3).)

(8) The total number of patients and boarders, if any, in a hospital shall at no one time exceed the number of patients for which the hospital is certified.

This subsection re-enacts sec. 39, subs. (3) of the Lunacy Act 1889.

(Act of 1889, s. 58, subs. (8).)

(9) No lunatic shall be received in any hospital unless the same has been registered before the passing of this Act, or is registered under a provisional or complete certificate by virtue of this Act.

Sec. 232 (1), (2).

This subsection re-enacts sec. 58, subs. (8) of the Lunacy Act 1889.

Lunatic.—Definition of, sec. 341, *post.*

Hospital.—Definition of, sec. 341, *post.*

Registered before.—See sec. 43 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and sec. 58 of the Lunacy Act 1889.

The passing of this Act, i.e. 29th March 1890 (sec. 3, *ante*).

The Commissioners may require the superintendent of any hospital registered before the passing of this Act to furnish, at the cost of the hospital, such plans of the buildings as the Commissioners may think fit (cp. r. 42, Rules of the Commissioners in Lunacy 1895, *post*).

(Act of 1889, s. 58, subs. (9).)

(10) The superintendent of any hospital who receives or detains any lunatic in the hospital contrary to the provisions of this Act, or to the terms of the complete certificate of registration, shall be guilty of a misdemeanour.

This subsection re-enacts sec. 58, subs. (9) of the Lunacy Act 1889.

The complete certificate.—See subs. (4), *ante.*

Misdemeanour.—As to prosecutions, see secs. 325, 328, *post.*

As to punishment, see notes to sec. 7, subs. (4), *ante.*

As to protection of persons putting the Act in force, see sec. 330, *post.*

Regulations.

232. (1) The regulations for the time being in force in a hospital shall be observed.

This subsection is based on sec. 30 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

Regulations.—See sec. 231, subs. (5), *ante.* The regulations may be altered by the managing committee.

Hospital.—Definition of, sec. 341, *post.*

Observed.—See note to sec. 226, *ante.*

(2) Such regulations shall be printed, and a copy thereof shall be sent to the Commissioners, and another copy hung up in the visitors' room in the hospital.

This subsection re-enacts the first clause of sec. 43 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and the last clause of sec. 30 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

Sec. 232 (3).

(3) If the regulations are not so sent and hung up, the superintendent shall be liable to a penalty not exceeding twenty pounds.

Act of 1891, sec. 21. Complaints as to control of patients.

21. If complaints are made by persons resident in the neighbourhood of any hospital that the patients are allowed to go outside the hospital without a sufficient number of officers to control them, or that the patients are allowed to wander at large without any control, the Commissioners may, if they are satisfied that there are primâ facie grounds for such complaints, inquire into the same, and may make such order in relation thereto as the Commissioners think just, and the superintendent of any hospital disobeying any such order shall be guilty of a misdemeanour.

Subs. (3) of sec. 232 re-enacts the last clause of sec. 43 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Penalty.—As to proceedings for the recovery of penalties, see sec. 326, *post.*

As to evidence on prosecution, see sec. 329, *post.*

Buildings not shown on plans not to be used for accommodation of lunatics. (Act of 1889, s.59,subs.(1).)

233. (1) No building in the occupation of the managing committee of a registered hospital not shown on the plans sent to the Commissioners pursuant to any rules made by them shall be deemed part of the hospital for any purpose connected with the reception or the care and treatment of lunatics.

This subsection re-enacts sec. 59, subs. (1) of the Lunacy Act 1889.

See clause (*h*) in the quotation from the 33rd Annual Report of the Commissioners cited in the notes to sec. 231, subs. (1), *ante.*

Managing committee.—See further as to, sec. 236, *post.*

Hospital.—Definition of, sec. 341, *post.*

The plans.—As to these, see rr. 39-41 of the Rules of the Commissioners 1895, *post.*

Shall be deemed, i.e. every building not so shown shall be conclusively taken not to be, etc. As to meanings of "deemed," see *ante* p. 138.

Lunatics.—Definition of, sec. 341, *post.*

(Act of 1889, s.59,subs.(2).)

(2) If the superintendent of a registered hospital knowingly permits any lunatic to be detained or lodged

in any building not shown on the plans of the hospital sent to the Commissioners, he shall be deemed guilty of a misdemeanour. Sec. 234 (1), (2).

This subsection re-enacts section 59, subs. (2) of the Lunacy Act 1889.

See notes to subs. (1).

Misdemeanour.—As to prosecutions, see secs. 325, 328, *post.*

As to punishment, see notes to sec. 7, subs. (4), *ante*, and clause (*h*) in the quotation from the 33rd Annual Report of the Commissioners cited in the notes to sec. 231, subs. (1), *ante.*

As to the protection of persons putting the Act in force, see sec. 330, *post.*

234. (1) The accounts of every registered hospital which does not submit its accounts to the Charity Commissioners shall be audited once a year by an accountant or other auditor to be approved by the Lunacy Commissioners, and shall be printed. Accounts to be audited and printed. (Act of 1889, s. 60, subs. (1).)

This subsection re-enacts sec. 60, subs. (1) of the Lunacy Act 1889 (52 & 53 Vict. c. 41).

See clause (*i*) in the quotation from the 33rd Annual Report of the Commissioners cited in the notes to sec. 231, subs. (1), *ante.*

Every registered hospital.—In the case of such hospitals, the superintendent must send an abstract of the accounts to the Commissioners in Lunacy within one month after the accounts have been submitted to the Charity Commissioners, or have been audited, as the case may be. This abstract must be in such form as the Commissioners in Lunacy from time to time prescribe (r. 42 of the Rules of the Commissioners 1895, *post*).

The Charity Commissioners.—Under sec. 12, subs. (14) of the Interpretation Act 1889 (52 & 53 Vict. c. 63), in that Act and in every other Act, whether passed before or after the commencement of that Act, unless the contrary intention appears, the expression "Charity Commissioners" shall mean the Charity Commissioners for England and Wales for the time being.

(2) The Lunacy Commissioners may, if they think fit, prescribe the form in which the accounts of any registered hospital are to be kept, and the day of the year to which they are to be made up. (Act of 1889, s. 60, subs. (2).)

This subsection re-enacts sec. 60, subs. (2) of the Lunacy Act 1889.

The Commissioners may, i.e. by rule under sec. 338, subs. (1), *post.*

Sec. 235.

Superannuation allowance of officer of hospital. (Act of 1889, s. 61.)

235. The managing committee of any hospital may grant to any officer or servant who is incapacitated by confirmed illness, age, or infirmity, or who has been an officer or servant in the hospital for not less than fifteen years and is not less than fifty years old, such superannuation allowance, not exceeding two-thirds of the salary of the superannuated person, with the value of the lodgings, rations, or other allowances enjoyed by him, as the committee think fit.

This section is a re-enactment of sec. 61 of the Lunacy Act 1889.

Superannuation allowance.—The Apportionment Act 1870 (33 & 34 Vict. c. 35) is applicable to such allowances. See definition of annuities in sec. 5 of that statute.

Persons disqualified to be members of managing committee of hospital. (Act of 1889, s. 62.)

236. The following persons shall be disqualified from being members of the managing committee of a registered hospital:

(*a*) Any medical or other officer of the hospital;

(*b*) Any person who is interested in or participates in the profits of any contract with or work done for the managing committee of the hospital, but so that this disqualification shall not extend to a person who is a member of an incorporated company which has entered into a contract with or done any work for the managing committee.

This section re-enacts sec. 62 of the Lunacy Act 1889.

See clause (*l*) in the quotation from the 33rd Annual Report of the Commissioners cited in the notes to sec. 231, subs. (1), *ante*.

Powers for enforcing regulations of hospitals. (Act of 1889, s. 63, subs. (1).)

237. (1) The Commissioners may require the superintendent or any other officer of a registered hospital to give them such information as the Commissioners think fit as to the mode in which the regulations of the hospital are carried out.

Sec. 237 (1)-(4).

This subsection re-enacts sec. 63, subs. (1) of the Lunacy Act 1889.

See clause (*k*) in the quotation from the 33rd Annual Report of the Commissioners cited in the notes to sec. 231, subs. (1), *ante*.

Such information.—As to penalty for failure to give information, see sec. 310, *post*.

As to evidence on prosecutions, see sec. 329, *post*.

(2) If the Commissioners are of opinion that the regulations are not properly carried out, they may give to the superintendent and any two members of the managing committee of the hospital notice stating the particulars in which the regulations are not properly carried out, and requiring such things to be done as the Commissioners think proper for carrying out the same. (Act of 1889, s. 63, subs. (2).)

This subsection re-enacts sec. 63, subs. (2) of the Lunacy Act 1889.

(3) If at the expiration of six months from the date of the notice the requirements of the notice have not, in the opinion of the Commissioners, been complied with, the Commissioners, with the consent in writing of a Secretary of State, may make an order directing the hospital to be closed as from the date named in the order, so far as the reception and detention of lunatics is concerned. (Act of 1889, s. 63, subs. (3).)

This subsection re-enacts sec. 63, subs. (3) of the Lunacy Act 1889.

See notes to subs. (1), *sup*.

Months.—"Month" means calendar month (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3).

From the date.—The day of the date is excluded (*ante* p. 145, note 1).

Secretary of State.—Definition of, cited *ante* p. 138.

(4) If any lunatics are detained or kept in the hospital after the date appointed by the order for closing the hospital, the superintendent of the hospital shall be guilty of a misdemeanour. (Act of 1889, s. 63, subs. (4).)

Sec. 237 (5).

This subsection re-enacts sec. 63, subs. (4) of the Lunacy Act 1889.

See notes to subs. (1), *ante*.

Misdemeanour.—As to prosecutions, see secs. 325, 328, *post*.

As to punishment, see notes to sec. 7, subs. (4), *ante*.

Protection of persons putting the Act in force, see sec. 330, *post*.

(Act of 1889, s. 63, subs. (5).)

(5) Before an order is made under this section, the Commissioners shall send to the superintendent and any two members of the managing committee of the hospital notice in writing requiring them to state in writing within fourteen days the reasons why the requirements of the first notice have not been complied with; and such statement, if any, shall be laid before the Secretary of State.

This subsection re-enacts sec. 63, subs. (5) of the Lunacy Act 1889.

Managing Committee.—As to, see sec. 236, *ante*.

Hospital.—Definition of, sec. 341, *post*.

Within fourteen days, *i.e.* from, but excluding, the day of the date of the notice. "Days" means all days, Sundays, etc., included. See notes to subs. (4), *sup*.

Secretary of State.—Definition of, cited *ante* p. 138.

Part IX.

COUNTY AND BOROUGH ASYLUMS.

Obligation to provide Asylums.

Local authorities to provide asylums.

238. (1) Every local authority, as defined by this Act, shall provide and maintain an asylum or asylums for the accommodation of pauper lunatics.

This subsection re-enacts the first clause of sec. 2 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Local authority.—See definition of, sec. 240, *post*.

Shall provide.—As to enforcement of obligations, see sec. 247, *post*. As to modes of provision, see secs. 241-246, *post*.

Asylum.—Definition of, sec. 341, *post*.

Pauper.—Definition of, sec. 341, *post.*
Lunatics.—Definition of, sec. 341, *post.*

Sec. 238 (2)-(4).

(2) Where the asylum accommodation of a local authority appears to the local authority to be insufficient, the local authority may supply the deficiency by exercising the powers by this Act conferred for providing asylum accommodation, or by rebuilding or enlarging any existing asylum.

This subsection re-enacts the first clause of sec. 30 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), and part of sec. 67, subs. (2) of the Lunacy Act 1889.

See notes to subs. (1).

Position of superintendent where accommodation insufficient.

Appears . . . insufficient.—The superintendent of a county asylum is justified in refusing admission if the accommodation is in fact insufficient, even though a patient is sent to him under a justice's order. The duty of the officer in charge of the patient under such circumstances is to return for directions to the justice who made the order. When no more patients can be accommodated in the county asylum, and they are not fit cases for detention in the workhouse, it becomes the duty of the county council to provide the additional accommodation necessary, either by building another asylum or by making arrangements for the reception of county patients in some other asylum or institution for lunatics.[1]

(3) For the purpose of providing asylum accommodation, a local authority may purchase any licensed or other houses and land.

(Act of 1889, s. 67, subs. (2).)

This subsection re-enacts sec. 67, subs. (2) of the Lunacy Act 1889.

See subss. (1) and (2).

(4) For the purpose of providing asylum accommodation a local authority not being a county council shall have the same powers as are by section sixty-five of the Local Government Act 1888 conferred upon a county council.

51 & 52 Vict. c. 41.

This subsection was enacted for the first time by the Act of 1890.

[1] Cp. 56 J.P. 125.

Sec. 238 (4).

Local Government Act of 1888, sec. 65.

Sec. 65 of the Local Government Act is as follows :—

(1) A county council may, from time to time, for the purpose of any of their powers and duties, including those which are to be executed through the standing joint committee, acquire, purchase, or take on lease, or exchange any lands or any easements or rights over or in land, whether situate within or without the county, and may acquire, hire, erect, and furnish such halls, buildings, and offices as they may from time to time require, whether within or without their county.

(2) For the purpose of the purchase, taking on lease, or exchange of such lands, sections one hundred and seventy-six, one hundred and seventy-seven, and one hundred and seventy-eight of the Public Health Act 1875 shall apply as if they were herein re-enacted, and in terms made applicable to the county council.

(3) Where the county council, with the consent of the Local Government Board, sell any land, the proceeds of such sale shall be applied in such manner as the said Board sanction towards the discharge of any loan of the council, or otherwise for any purpose for which capital may be applied by the council.

Secs. 176-178 of the Public Health Act 1875 (38 & 39 Vict. c. 55) are as follow :—

Public Health Act 1875, secs. 176-178.

Sec. 176.—With respect to the purchase of lands by a local authority for the purposes of this Act, the following regulations shall be observed (that is to say)—

(1) The Lands Clauses Consolidation Acts 1845, 1860, and 1869, shall be incorporated with this Act, except the provisions relating to access to the special Act, and except section 127 of the Lands Clauses Consolidation Act 1845 ;

(2) The local authority before putting in force any of the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, shall

Publish once at the least in each of three consecutive weeks in the month of November, in some local newspaper circulated in their district, an advertisement describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of lands that they require ; and shall further

Serve a notice in the month of December on every

Sec. 238 (4).

owner or reputed owner, lessee or reputed lessee, and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such lands;

(3) On compliance with the provisions of this section with respect to advertisements and notices, the local authority may, if they think fit, present a petition under their seal to the Local Government Board. The petition shall state the lands intended to be taken, and the purposes for which they are required, and the names of the owners, lessees, and occupiers of lands who have assented, dissented, or are neuter in respect of the taking such lands, or who have returned no answer to the notice; it shall pray that the local authority may, with reference to such lands, be allowed to put in force the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Local Government Board requires;

(4) On the receipt of such petition, and on due proof of the proper advertisements having been published and notices served, the Local Government Board shall take such petition into consideration, and may either dismiss the same, or direct a local inquiry as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made no provisional order shall be made affecting any lands without the consent of the owners, lessees, and occupiers thereof;

(5) After the completion of such inquiry the Local Government Board may, by provisional order, empower the local authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the Board may think fit, and it shall be the duty of the local authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served;

Provided that the notices by this section required to be given in the months of November and December may be given in the months of September and October, or of October and November, but in either of such last-mentioned cases an inquiry preliminary to the provisional order to which such notices refer shall not be held until the expiration of one month from the last day of the

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second of the two months in which the notices are given; and any notices or orders by this section required to be served on a number of persons having any right in, over, or on lands in common may be served on any three or more of such persons on behalf of all such persons.

Power to let lands.

Sec. 177.—Any local authority may, with the consent of the Local Government Board, let for any term any lands which they may possess, as and when they can conveniently spare the same.

Provision for lands belonging to the Duchy of Lancaster.

Sec. 178.—The Chancellor and Council of the Duchy of Lancaster for the time being may, if they think fit (but subject and without prejudice to the rights of any lessee, tenant, or occupier), from time to time contract with any local authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said Chancellor and Council may appear sufficient consideration, the whole or any part of any lands belonging to Her Majesty, her heirs or successors, in right of the said Duchy, or any right, interest, or easement in, through, over, or on any such lands which, for the purposes of this Act such local authority from time to time deem it expedient to purchase; and on payment of the purchase money, as provided by the Duchy of Lancaster Lands Act 1855, the said Chancellor and Council may grant and assure to the said authority, under the seal of the said Duchy, in the name of Her Majesty, her heirs or successors, the subject of such contract or sale, and such money shall be dealt with as if such subject had been sold under the authority of the Duchy of Lancaster Lands Act 1855.

Powers to be exercised by a visiting committee.

239. A local authority shall exercise the powers conferred by this Act for providing asylum accommodation by a visiting committee, subject, if the local authority thinks fit, to their directions as to which of the methods of providing asylum accommodation authorised by this Act shall be adopted.

This section re-enacts parts of secs. 2, 11, and 12 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Local authority.—See definition of in sec. 240, *post.*

Visiting committee.—See definition of in sec. 341, *post.*

Appointment of, see sec. 169, *ante.*

The methods . . . adopted.—See secs. 242-46, *post.*

Local Authority defined.

Local authority defined. (Act of 1889, s. 91).

240. The council of every administrative county and county borough respectively constituted under the Local

Government Act 1888, and the council of each of the boroughs specified in the Fourth Schedule, or in the case of the City of London the Common Council, shall be a local authority for the purposes of this Act. Sec. 241.

This section is based upon sec. 91 of the Lunacy Act 1889.

Administrative county.—By sec. 100 of the Local Government Act 1888 (51 & 52 Vict. c. 41), it is enacted (amongst other things) that the expression "administrative county" in that Act, if not inconsistent with the context, means the area for which a county council is elected in pursuance of that Act, but does not (except where expressly mentioned) include a county borough. Definition of administrative county.

The Fourth Schedule.—See *post.* As to Lancashire, see Lancashire (Lunatic Asylums, etc.) Act 1891 (54 & 55 Vict. c. 20), Appx. *post.*

Powers for providing Asylums.

241. A local authority may provide asylum accommodation for pauper and private patients, together or in separate asylums, and may provide separate asylums for idiots or patients suffering from any particular class of mental disorder. Power to provide asylums for pauper and private patients. (Act of 1889, s. 67, subs. (1).)

This section re-enacts sec. 67, subs. (1) of the Lunacy Act 1889.

Local authority.—See definition of in sec. 240, *sup.*

Asylum.—See definition of in sec. 341, *post.*

Accommodation.—As to the modes in which the accommodation may be provided, see secs. 242-46, *post.*

Pauper.—Definition of, sec. 341, *post.*

Private patients.—Definition of, sec. 341, *post.* The Commissioners in Lunacy in their 49th Report dwelt upon the need for the provision by local authorities of special and separate accommodation at cheap rates for private patients. The West Riding of Yorkshire County Council have contracted for the purchase of a site which will be suitable for the erection of an asylum for 250 patients of the private class (50th Report of Commissioners in Lunacy, p. 10).

Asylums for idiots.—See also the Idiots Act 1886 (49 & 50 Vict. c. 25), *post.*

242. (1) For the purpose of providing asylum accommodation, a local authority may do all or any of the following things: Modes in which asylum may be provided.

(*a*) Provide and maintain an asylum alone;

Sec. 242 (1)-(3).

(*b*) Agree to unite in providing and maintaining a district asylum with any other local authority or local authorities;

(*c*) Agree to unite with any other local authority or local authorities, upon such terms as to payment and otherwise as may be thought proper, for the joint use as a district asylum of any existing asylum, and, if they think fit, for the enlargement of the same.

This subsection re-enacts in substance the first clause of sec. 3 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Local authority.—Definition of, sec. 240, *ante.*

(*a*) *Asylum.*—Definition of, sec. 341, *post.*

(*b*) *Agree to unite.*—See form of such agreement, Form 21, Sched. ii., *post.* As to the use of forms, see sec. 339, *post.* The approval of a Secretary of State is necessary (see subs. (3), *inf.*).

(*c*) *Agree to unite . . . same.*—The corresponding provision in sec. 3 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97) included agreements to unite with the subscribers to a hospital. That method is, however, prohibited save as to contracts existing on 26th Aug. 1889 (sec. 269, subs. (2), *post*), by subs. (8) of sec. 269, *post.*

(2) Where an agreement to unite has been entered into, an agreement for further union may be entered into between all or any of the local authorities concerned, and for all the purposes of this Act an agreement for further union shall be deemed to be an agreement to unite.

This subsection is based on the second clause of sec. 3 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

As to agreements to unite, see secs. 248-53 and 267, *post.*

Deemed, i.e. conclusively taken to be (*ante* p. 138).

(3) An agreement to unite shall not be carried into effect without the approval of the Secretary of State.

This subsection re-enacts the last clause of sec. 45 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Approval of Secretary of State.

Approval.—As to mode of obtaining approval, see sec. 272, *post.*

Secretary of State.—See definition of, cited *ante* p. 169.

Sec. 243 (1)-(4).

Contract between council of county borough and visiting committee.

243. (1) The council of a county borough may contract with the visiting committee of an asylum for the reception of the pauper lunatics of the borough into the asylum.

This subsection re-enacts the second clause of sec. 7 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

County borough.—Definition of, sec. 341, *post.*

Visiting committee.—Definition of, sec. 341, *post.*

Asylum.—Definition of, sec. 341, *post.*

Pauper.—Definition of, sec. 341, *post.*

Lunatics.—Definition of, sec. 341, *post.*

(2) Any such contract may be made for such consideration and upon such terms as to duration, determination, and otherwise as may be agreed between the council of the borough and the visiting committee of the asylum.

This subsection re-enacts the first clause of sec. 7 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

See notes to subs. (1).

(3) While a contract under this section is in force, making adequate provision for the pauper lunatics of the borough, the council of the borough shall not be required to provide an asylum alone or in union.

This subsection re-enacts the last clause of sec. 7 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

See subss. (1) and (2).

While . . . is in force.—As to the appointment of a visiting committee while such a contract is in force, see sec. 169, subs. (6), *ante;* and as to the duties of such visiting committee, see sec. 189, *ante.*

(4) A contract under this section shall not be carried into effect until approved by a Secretary of State.

This subsection re-enacts the last clause of sec. 45 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See notes to sec. 242, subs. (3), *ante.*

244. (1) Where a county borough has contributed to the cost of building and furnishing a county asylum, the

Sec. 244 (1), (2).

existing liability of the borough council shall continue until a new arrangement is made under this section, and the county council shall provide accommodation for and maintain pauper lunatics sent from the borough on the same terms as hitherto.

Provision for case where a county borough has contributed to the cost of a county asylum.

This subsection is based on the first clause of sec. 32, subs. (3) (*c*) of the Local Government Act 1888 (51 & 52 Vict. c. 41).

County borough.—Definition of, sec. 341, *post.*

Asylum.—Definition of, sec. 341, *post.*

Costs of arrangements, etc.

A new arrangement.—See subs. (2), *inf.* *Semble*, that the costs of a new arrangement or the termination of the old contract must be borne by the council of the borough on which is cast the duty of providing an asylum for the reception of lunatics.[1]

Pauper.—Definition of, sec. 341, *post.*

Lunatics.—Definition of, sec. 341, *post.*

(2) Any new arrangement may be made between the county council and all the borough councils concerned, with respect to any such asylum; and if any such new arrangement is made, the borough and county councils may carry into effect any adjustment of property, debts, and liabilities which is the subject of such arrangement. If any council desires to make a new arrangement, and any or all of the other councils refuse to agree to the same, the matter shall be referred to the Commissioners under the Local Government Act 1888, or, after they have ceased to hold office, to arbitration under that Act.

51 & 52 Vict. c. 41.

This subsection re-enacts the second and third clauses of sec. 32, subs. (3) (*c*) of the Local Government Act 1888 (51 & 52 Vict. c. 41). See notes to subs. (1).

The Commissioners.—See sec. 61 of the Local Government Act 1888.

Arbitration.—See sec. 62, *ib.*

Act of 1891, sec. 14. Power to refer questions as to asylums to the Court or to arbitration.

14. Any question relating to lunatic asylums or the maintenance of lunatics arising between any local authorities under the principal Act and any boroughs not being local authorities under that Act, and any visiting committees or

[1] Cp. 57 J.P. 45. A new arrangement under this section has recently been made between the Cheshire County Council and the county boroughs of Birkenhead and Stockport (50th Report of Commissioners in Lunacy, p. 10).

any two or more of such parties respectively, may be referred to an arbitrator appointed by the parties, or, if the parties cannot agree upon an arbitrator, by the Local Government Board.

[Sec. 244 (2).

May be referred.—See *Howlett* v. *Mayor of Maidstone.*[1]

15. The provisions of subsections five, six, and seven of section sixty-two of the Local Government Act 1888 shall apply to every sum by virtue of this Act agreed to be paid or awarded by an arbitrator as if such sum had been agreed to be paid or awarded under section sixty-two of the Local Government Act 1888.

Act of 1891, sec. 15. Sec. 62 of 51 & 52 Vict. c. 41, applied.

The provisions.—They are as follows:—

(5) Any sum required to be paid for the purpose of adjustment, or of any award or order made by the Commissioners, or an arbitrator under this Act, may be paid out of the county or borough fund or out of such other special fund as the council, with the approval of the Commissioners under this Act or of the Local Government Board, may direct.

(6) The payment of any capital sum required to be paid for the purposes of the adjustment or of an agreement under this Act, or of any award or order made upon any arbitration under this Act, shall be a purpose for which a council may borrow under this Act, or in the case of a borough council, under the Municipal Corporations Act 1882, or any local Act, and such sum may be borrowed on the security of all or any of the funds, rates, and revenues of the council, and either by the creation of stock or in any other manner in which they are for the time being authorised to borrow, and such sum may be borrowed without the consent of the Treasury or any other authority, so that it be repaid within such period as the Local Government Board may sanction, by such method as is mentioned in Part Four of this Act for paying off a loan, or, if the sum is raised by stock under a local Act, by such method as is directed by that Act.

(7) Any capital sum paid to any council for the purpose of any adjustment, or in pursuance of any order or award of an arbitrator under this Act, shall be treated as capital, and applied, with the sanction of the Local Government Board, either in the repayment of debt or for any other purpose for which capital money may be applied.

245. (1) Where any borough specified in the Fourth Schedule contributes to a county asylum, such borough shall, so long as it continues to contribute, be deemed to

Borough contributing to county asylum exempt.

[1] 1891, 2 Q.B. 110.

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satisfy the requirements of this Act with respect to asylum accommodation.

This subsection re-enacts the first clause of sec. 8 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Fourth Schedule.—See *post.*

County.—Definition of, sec. 341, *post.*

Asylum.—Definition of, sec. 341, *post.*

"Shall be deemed to satisfy."

Shall be deemed to satisfy.—It is conceived that the contribution is a complete satisfaction of the requirements of the Act to all intents and purposes.[1] The council of the borough may, however, resolve to separate from the county to which it contributes (see subss. (2), (3), *inf.*).

The requirements of this Act.—See sec. 238, subs. (1), *ante.*

(2) The council of the borough may resolve for the purpose of providing asylum accommodation to separate from the county to which it contributes.

This subsection re-enacts the second clause of sec. 8 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

See preceding subsection and notes.

The borough.—See list of boroughs to which the provision applies in Fourth Schedule, *post.*

(3) Notice of the resolution to separate shall be given to the clerk of the county council, and upon the expiration of six months from the date of the notice, the council of the borough shall be subject to the obligations imposed by this Act of providing asylum accommodation.

This subsection re-enacts the second and third clauses of sec. 32, subs. (3) (*c*) of the Local Government Act 1888 (51 & 52 Vict. c. 41).

See notes to subss. (1) and (2), *ante.*

Month.

Months.—"Month" means calendar month (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3).

"From the date."

From the date.—The date of the notice is excluded.[2]

The obligations . . . accommodation.—See sec. 238, subs. (1), *ante*, and subs. (4), *inf.*

[1] *Cp. ex parte Walton*, 1881, 17 Ch.D. 756, per James, L.J., as to the meaning of the word "deemed"; and *Hill* v. *East and West India Dock Co.*, 1884, per Cairns, L.C., 9 App. Cas. 455, 456.

[2] Cp. *re Railway Sleepers Supply Co.*, 1885, 29 Ch.D. 204.

(4) Notwithstanding a notice to separate, the council of the borough shall continue liable to contribute to the county asylum, until all the pauper lunatics therein belonging to the borough have been removed.

This subsection re-enacts the third clause of sec. 8 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

A notice to separate.—See subss. (2) and (3), *sup.*

County.—Definition of, sec. 341, *post.*

Asylum.—Definition of, sec. 341, *post.*

Pauper.—Definition of, sec. 341, *post.*

Lunatics.—Definition of, sec. 341, *post.*

Where borough contracts with county powers of borough to provide an asylum to cease on determination of contract.

Repealed by Act of 1891, Schedule.

246. Where any borough specified in the Fourth Schedule has contracted for the reception of the lunatics of the borough in the asylum of the county in which the borough is situate, the borough shall, on the determination of the contract, cease to be a local authority under this Act, and *subject to the enactments providing for an additional charge for the maintenance of lunatics in cases where no contribution has been made towards the cost of building and furnishing an asylum*, shall be liable to contribute to the county rate of the county in respect of such lunatic asylum in like manner as the rest of the county.

Act of 1891, sec. 13. Boroughs annexed to counties under s. 246 to contribute to expense of asylum.

13. (1) **Where under section two hundred and forty-six of the principal Act, a borough ceases to be a local authority under that Act, the borough shall for all purposes of that Act be annexed to and treated as part of the county in which the borough is situate, and if or so far as the borough has not contributed towards the expense of providing the asylum of the county, a sum to be paid by the borough towards the expenses already incurred in providing the asylum shall be fixed by agreement between the councils of the county and borough, or in default of agreement by an arbitrator appointed by the parties, or, if the parties cannot agree upon an arbitrator, by an arbitrator appointed by the Local Government Board. In fixing the sum to be paid by the borough, the borough shall be credited with any sums already contributed by the borough for lunacy purposes in excess of its**

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legal liability; and the arbitrator shall take into consideration the amounts that may have been paid by the borough for the reception or maintenance, in the asylum of the county, of the lunatics of the borough.

51 & 52 Vict. c. 41.

(2) Where a borough had before the passing of this Act, by virtue of section eighty-six of the Local Government Act 1888, and the determination of any contract, become liable to contribute to the county rate of the county in respect of a lunatic asylum, this section shall apply to such borough as if it had immediately after the passing of this Act ceased under section two hundred and forty-six of the principal Act to be a local authority.

Section 246 of the Act of 1890 re-enacts sec. 86, subs. (4) of the Local Government Act 1888 (51 & 52 Vict. c. 41).

Any borough . . . Schedule.—See *post.* This section applied only to boroughs having a contract which determined after the date on which the Act came into force, viz. on 1st May 1890. But subs. (2) of sec. 13 of the Act of 1891 gives it a retrospective operation (see *sup.*).

Has contracted.—The power of contract referred to was given by sec. 7 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Lunatics.—Definition of, sec. 341, *post.*

Asylum.—Definition of, sec. 341, *post.*

County.—Definition of, sec. 341, *post.*

"Cease to be a local authority."

Cease to be a local authority, etc.—The corresponding words in subs. (4) of sec. 86 of the Local Government Act 1888 (51 & 52 Vict. c. 41) were "cease to have power to build a lunatic asylum." The words in the present section have, however, the same effect for this purpose, as an obligation to provide asylum accommodation is imposed by sec. 238, subs. (1), *ante*, upon every local authority as defined in sec. 240, *ante*. See following note.

Maintenance of borough lunatics.

Subject . . . asylum.—These words are repealed by the Act of 1891, Schedule, *post*, and sec. 13, subs. (1) of that statute embodies the law in relation to the maintenance of borough lunatics, as it was settled in *Howlett* v. *Mayor, etc., of Maidstone.*[1] The borough is deprived of its power to erect an asylum, and, instead, it is bound to send its lunatics to the county asylum, and to contribute a sum fixed by agreement or arbitration, under sec. 62 of the Local Government Act 1888. The reason for the repeal of the clause under consideration was probably the objection to it pointed out by the Court of Appeal in the *Maidstone case*,[2] viz. that it seemed to imply that the enactments referred to[3] created *a liability*, whereas in fact they only gave a *power to contract*, and through contract to create a liability, and this very power to contract the Act of 1888 itself destroyed.

[1] 1891, 2 Q.B. 110.

[2] *Ubi sup.*, at pp. 113 and 114.

[3] These enactments were 16 & 17 Vict. c. 97, 25 & 26 Vict. c. 14, and 30 & 31 Vict. c. 106. Their joint effect is stated in the *Maidstone case, ubi sup.*, at p. 113.

Power of Secretary of State to enforce Act.

Default by county or borough in providing asylum.

247. If the Commissioners report to a Secretary of State that any local authority has failed to satisfy the requirements of this Act as regards asylum accommodation, the Secretary of State may require the local authority to provide such accommodation in such manner as he may direct, and the local authority shall forthwith carry the requisition into effect.

This section re-enacts sec. 29, and the third clause of sec. 30 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

The Commissioners.—Definition of, sec. 341, *post.*

Appointment of, sec. 150, *ante.*

A Secretary of State.—One of H.M. principal Secretaries of State. In practice the Home Secretary (see *ante* p. 169).

Local authority.—Definition of, sec. 240, *ante.*

The requirements, etc.—See sec. 238, *ante.*

Shall forthwith.—The Secretary of State may enforce the requisition by mandamus. Query whether, even if special damage arise from neglect to provide asylum accommodation, an action will lie for the recovery of it.

Agreements to unite.

Provisions to be contained in agreements to unite.

248. (1) Agreements to unite shall state—

(*a*) The number of visitors to be chosen by each contracting party;

(*b*) The proportion in which the expenses of providing the asylum are to be borne by each contracting party, and the basis upon which such proportion is fixed;

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(*c*) Where the agreement provides for the joint user of an existing asylum, the sum to be paid by each contracting party towards expenses already incurred.

This subsection re-enacts in substance sec. 14 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Sec. 248 (1), (2).

Agreements to unite.—See Form 21, Sched. ii., *post.* As to use of such forms, see sec. 339, *post.*

Number of visitors.

The number of visitors.—See sec. 239, and notes, *ante.*

Proportion of expenses.

The proportion . . . fixed.—See sec. 249, *inf.*, as to the apportionment of expenses. There was no provision corresponding to this in sec. 14 of the Act of 1853. That section also contained provision for union with the subscribers to hospitals, now prohibited for the future by sec. 269, subs. (8), *post.*

The agreement may also fix the apportionment of expenses for repairs (see sec. 266, subs. (4), *post*).

(2) Provisions in any agreement to unite, subjecting the visiting committee to any control not provided for by this Act, except the control of the Secretary of State, shall be of no effect.

This subsection re-enacts sec. 15 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

The visiting committee.—As to appointment of, see sec. 253, *post.* The powers and duties of visiting committees are embodied in secs. 254-284, *post.*

The Secretary of State.—See notes to sec. 247, *sup.* In practice the Home Secretary (see *ante* p. 169). See also sec. 242, subs. (3), as to control by, *ante.*

"No effect."

No effect.—There has apparently been no judicial decision as to the meaning of the words "no effect," or "none effect," when standing alone. In conjunction with "void," they are merely expletives, or surplusage.[1] It is thought that here they are equivalent to "void."[2]

Apportionment of expenses.

249. The proportion in which the expenses of providing a district asylum are to be borne, as between the uniting counties and boroughs, may be fixed either according to the extent of the accommodation required for each county and borough, or in proportion to the respective population of each county or borough according to the last census for the time being.

This section re-enacts the third clause of sec. 14 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), and secs. 2-4 of the Lunacy Act 1855 (18 & 19 Vict. c. 105).

The proportion.—See subs. (1) (*b*) of sec. 248, *sup.*

As to varying apportionment of expenses, see sec. 250 and notes, *inf.*

Uniting counties.—As to agreements to unite, see sec. 248, *ante.* Definition of county, see sec. 341, *post.*

Borough.—Definition of, sec. 341, *post.*

[1] Dwarris, 653. [2] Cp. *Gooch's Case*, 32 & 33 Eliz., 5 Rep. 60 (*b*).

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Power to vary agreement to unite.

250. An agreement to unite may with the consent in writing of a majority of the visitors of each contracting local authority and with the sanction of the Secretary of State be altered or varied, but not so as to contain any provision which might not have been contained in an agreement to unite in the first instance.

This section re-enacts sec. 16 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as extended by sec. 2 of the Lunacy Act 1855 (18 & 19 Vict. c. 105), and as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41), and sec. 64 of the Lunacy Act 1889.

Agreement to unite.—See sec. 248.

The visitors.—See sec. 239, *ante*.

Local authority.—See sec. 240, *ante*.

Sanction.—An agreement to unite requires the approval of the Secretary of State (sec. 242, subs. (3), *ante*).

As to how sanction of obtained, see sec. 272, *post*.

The Secretary of State.—See note to sec. 247. In practice the Home Secretary.

Varied.—The apportionment of expenses may be varied under this section.

But not . . . instance.—See sec. 248, subs. (2), *ante*.

Agreement to unite to be reported and delivered to clerk of local authority.

251. (1) Every agreement to unite shall as soon as possible be reported to the local authorities interested.

This subsection re-enacts the first clause of sec. 19 of the Lunatic Asylums Act 1853, as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Every agreement to unite.—See sec. 248, *ante*.

Reported.—As to procedure, see subss. (2)-(4).

The local authorities interested.—See sec. 248, *ante*.

(2) The original of every agreement to unite, and of every agreement varying an agreement to unite, shall be delivered to the clerk of the local authority within whose administrative area the asylum to which the same relates is situate or is intended to be situate, and shall be kept by him among the records of the local authority.

This subsection re-enacts the second clause of sec. 19 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Every agreement varying.—See sec. 250, *ante*.

Sec. 251 (3), (4).

The clerk.—See definition of in relation to local authority, sec. 341, *post.*

The local authority.—See definition of, sec. 240, *ante.*

Asylum.—See definition of, sec. 341, *post.*

(3) The original agreement so delivered may be inspected without payment by any Commissioner and by any member of the council of any of the contracting local authorities.

This subsection re-enacts the fifth clause of sec. 19 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

See notes to preceding subsections.

Any Commissioner.—A copy is to be sent to the Commissioners (see subs. (4), *inf.*). Definition of Commissioners, sec. 341, *post.*

(4) The clerk of a local authority to whom any such agreement is delivered shall cause copies to be made thereof, and shall within twenty days after delivery to him of the original send one copy to the Commissioners and another copy to each of the contracting local authorities.

This subsection re-enacts the third and fourth clauses of sec. 19 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

See notes to preceding subsections.

Within twenty days.—The day of the delivery is excluded. "Days" means all days, Sundays, etc., included (*ante* p. 117).

Application of money paid for expenses already incurred.

252. Where under an agreement to unite a sum is to be paid towards the expenses already incurred by a local authority in relation to an existing asylum, the sum shall be paid to the treasurer of the local authority as part of the county or borough fund and shall be applied to purposes for which capital is properly applicable.

This subsection supersedes sec. 18 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Agreement to unite.—See sec. 248, *ante.*

A sum is to be paid.—See sec. 246, *ante*.
A local authority.—Definition of, sec. 240, *ante*.
Asylum.—Definition of, sec. 341, *post*.

Visitors to be chosen.

253. When an agreement to unite has been reported, each local authority shall elect out of their body the number of visitors agreed to be chosen by them, and the visitors so chosen shall carry the agreement into effect and shall be the visiting committee of the asylum until the election of a visiting committee in their place.

This section re-enacts sec. 20 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41), and sec. 64 of the Lunacy Act 1889.
Agreement to unite.—See sec. 248, *ante*.
Reported.—See sec. 251, *ante*.
Local authority.—See sec. 240, *ante*.
The number of visitors agreed.—The number of visitors is to be stated in the agreement (sec. 248, subs. (1) (*a*), *ante*).
Visiting committee.—Definition of, sec. 341, *post*.
Powers, etc., of, secs. 254-284.
Asylum.—Definition of, sec. 341, *post*.
The election.—After the agreement has been carried into effect the election will be made annually (sec. 169, subs. (1), *ante*), generally at the quarterly meeting of the local authority in November (sec. 170, *ante*).

"The election."

Purchase of Land and other incidental Powers.

Powers of committee to provide asylum.

254. (1) A visiting committee authorised to provide asylum accommodation may agree upon plans and estimates, and contract for the purchase of lands and buildings with or without fittings and furniture, and for the erection, restoration, enlargement, and furnishing of buildings, and for the supply of clothing, and for all the matters necessary for carrying into effect the authority conferred upon them.

This subsection re-enacts the first and second clauses of sec. 31 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).
A visiting committee.—Definition of, sec. 341, *post*.
Election of, sec. 253, *ante*.
Powers, etc., of, secs. 254-284.

Sec. 254 (1)-(3).

Authorised, etc.—See secs. 239 and 253, *ante*.

Plans and estimates.—As to approval of, see subss. (2)-(4), *inf.*

Contract.—As to contracts, see sec. 256, *post*.

Lands.—As to site, see sec. 262, *post*. Definition of, sec. 341, *post*.

"Buildings, fittings, furniture."

Buildings . . . fittings . . . furniture.—What is a building is a question of degree. See cases under different statutes in Stroud's *Jud. Dict.* p. 91. The term "fittings" would include everything that might properly be regarded as fittings of a building, whether it was suitable for an asylum or not, if its purchase was necessary to enable the committee to carry the authority conferred upon them into effect. A similar observation applies to "furniture."

What are necessary matters.

All the matters necessary.—These words would include the preparation of probationary drawings,[1] where an architect contracts to prepare both probationary and working drawings. *Semble*, that he is not entitled to recover anything unless and until the former have been approved, and the latter completed.[2] Under this section, taken in conjunction with secs. 261 and 264, *post*, it is conceived that a visiting committee has power to contract for a licence to carry a sewer through private lands.[3]

Act of 1891, sec. 16.

(2) Plans and contracts **for the purchase of lands and buildings, and for the erection, restoration, and enlargement of buildings** agreed upon by a visiting committee shall not be carried into effect until approved by a Secretary of State.

This subsection is based on sec. 45 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Consent of Secretary of State, when necessary.

For the purchase . . . buildings.—This clause makes the consent of the Secretary of State necessary only in the case of contracts for the purchase of lands and buildings, and for the erection, restoration, and enlargement of buildings. This was the law prior to the Act of 1890. The alteration in it effected by this subsection, before its amendment, was inadvertent.

Agreed upon.—See subs. (1), *sup.*

A visiting committee.—See subs. (1), *sup.*

Approved.—As to mode of obtaining approval, see sec. 272, *post*. As to approval of alterations or additions, see sec. 255, *post*.

A Secretary of State.—See note to sec. 247, *ante*. In practice the Home Secretary. As to reference to Secretary of State of difference between local authorities, see subs. (4), *inf.*

(3) A visiting committee shall report to the local authority or local authorities by whom they were elected, all plans, estimates, and contracts agreed upon, and also

[1] Cp. *Moffatt* v. *Dickson*, 1853, 13 C.B. 543. [2] S.C. [3] Cp. 55 J.P. 140.

the amount to be paid by each local authority, and such plans, estimates, and contracts shall be subject to the approval of the local authority, to whom they are to be reported, except where the amount to be expended does not exceed an amount previously fixed by the local authority.

This subsection re-enacts the proviso to sec. 31 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Visiting committee.—See note to subs. (1), *sup.*

Local authority.—Definition of, sec. 240, *ante.*

Elected.—As to election of visiting committee, see sec. 253, *ante.*

All plans . . . upon.—See subss. (1) and (2), *sup.* As to when approval by Secretary of State is necessary, see subs. (2), *sup.*

The amount to be paid.—See sec. 249, *ante.*

Subject . . . reported.—A contract may be approved before it is actually signed, if it can be identified as the contract which was afterwards entered into.[1]

Contract may be approved before actual signature.

(4) In the event of a difference between any local authorities as to whether any plan, estimate, or contract ought to be approved, the local authority withholding approval shall, within four months after the plan, estimate, or contract has been reported to them, send to a Secretary of State a statement in writing of their objections, and the Secretary of State may direct the plan, estimate, or contract to be carried into execution, with or without any alterations, or he may direct such other plan, estimate, or contract, as he thinks fit, to be carried into execution, and the decision of a Secretary of State under this section shall be final.

This subsection re-enacts sec. 4 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

See notes to preceding subsections.

A difference, etc.—See subs. (3), *sup.*

A Secretary of State.—The Home Secretary in practice. See subs. (2), *sup.*, as to cases where approval of Secretary of State is required.

The decision.—If necessary the decision may be enforced by mandamus.

[1] *Devenish* v. *Brown*, 1857, 26 L.J. Ch. 23.

Sec. 255.

Additions to asylums for private patients. (Act of 1889, s. 66, subs. (1).)

255. The visiting committee of an asylum, with the consent of each local authority by whom the asylum is provided, and with the approval in writing of a Secretary of State, may make such alterations in or additions to the asylum either by way of detached buildings or blocks of buildings or otherwise as they think fit for the purpose of providing accommodation for private lunatics.

This section re-enacts sec. 66, subs. (1) of the Lunacy Act 1889.
Visiting committee.—Definition of, sec. 341, *post*, and sec. 253, *ante.*
Asylum.—Definition of, sec. 341, *post.*
Local authority.—Definition of, sec. 240, *ante.*
By whom, etc.—See sec. 248, *ante*, as to agreements to unite.
Approval in writing.—As to how obtained, see sec. 272, *post.* As to approval of plans and contracts, see sec. 254, subs. (2), *sup.*
A Secretary of State.—See note to sec. 247, *ante.* In practice the Home Secretary.
Private lunatics.—Definition of "lunatic," sec. 341, *post.*
Definition of "private patients," sec. 341, *post.*

Contracts.

256. (1) Every person entering into a contract with a visiting committee shall give sufficient security for due performance of the contract.

This subsection re-enacts the third clause of sec. 31 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).
A contract.—See sec. 254, *ante.*
Visiting committee.—Definition of, sec. 341, *post.* Powers, etc., of, secs. 254-284.

(2) Every such contract and all orders relating thereto shall be entered in a book to be kept by the clerk of the visiting committee, and when the contract is completed the book shall be deposited and kept among the records of the local authority, or, when more than one local authority is interested, then among the records of the local authority which contributes the largest proportion of the expenses of the contract.

This subsection re-enacts the fourth and fifth clauses of sec. 31 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

See notes to subs. (1).
Local authority.—Definition of, sec. 341, *post.*

(3) Every such book may be inspected at all reasonable times by any person contributing to the rates of the local authority interested in the contract.

This subsection re-enacts the sixth clause of sec. 31 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41), and by sec. 64 of the Lunacy Act 1889.
Local authority.—Definition of, sec. 240, *ante.*

(4) A copy of every such book shall be kept at the asylum to which the contract relates.

This subsection re-enacts the seventh clause of sec. 31 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).
Asylum.—Definition of, sec. 341, *post.*

Enlargement of district asylum.

257. A district asylum shall not be enlarged or improved without the consent of all the parties to the agreement under which the same is provided.

This section re-enacts the second clause of sec. 30 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).
District asylum.—Definition of, sec. 341, *post.*
The agreement.—See sec. 242, subs. (1) (*b*) and (*c*), *ante.*

Burial grounds.

258. (1) The visiting committee of an asylum, with the consent of the local authority by whom they are appointed and of a Secretary of State, may provide for the burial of lunatics dying in the asylum, and of the officers and servants belonging thereto—

(*a*) By appropriating any land already belonging to them or acquiring any land, not exceeding in either case two acres, for enlarging an existing burial ground, or for providing a new burial ground;

(*b*) By agreeing with any corporation or persons or body of persons willing to provide for the burial of such lunatics and other persons as aforesaid.

Sec. 258 (1)-(3).

This subsection is based on secs. 12 and 13 of the Lunacy Act 1855 (18 & 19 Vict. c. 105), and sec. 9 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

Visiting committee.—Definition of, sec. 341, *post.*

Asylum.—Definition of, sec. 341, *post.*

Local authority.—Definition of, sec. 240, *ante.*

Appointed.—As to appointment of, see sec. 253, *ante.*

Secretary of State.—"One of H.M. principal Secretaries of State," see *ante* p. 169. In practice the Home Secretary. As to how consent of is obtained, see sec. 272, *post.*

Provide for.—As to payment of expenses attending the burial of any pauper lunatic dying in an institution for lunatics, see sec. 297, *post.*

Lunatics.—Definition of, sec. 341, *post.*

(2) The committee may procure the consecration of a new or enlarged burial ground, and in the case of a new burial ground, may provide for the appointment of a chaplain therein.

This subsection re-enacts the fourth clause of sec. 9 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

The appointment of a chaplain.—As to appointment of chaplain of asylum, see sec. 276, subs. (1), *post.*

(3) The incumbent of the parish in which a new or enlarged burial ground provided by a visiting committee is situate, shall not be entitled to any fee for the interment of any person buried therein by direction of the committee.

This subsection is based on the last clause of sec. 13 of the Lunacy Act 1855 (18 & 19 Vict. c. 105).

Any fee.—As to burial fees on interment of pauper lunatics in public burial ground of another parish, see sec. 259, *inf.*

Burial of lunatics.

259. Where a visiting committee undertakes the burial of any pauper lunatic, and the public burial ground of the parish where the death took place is closed or inconveniently crowded, the burial may take place in a public burial ground of some other parish, with the consent of the minister and churchwardens of that parish; and in that case the visiting committee shall pay to the person

entitled thereto the burial fees payable under any Act or according to the custom of the place of burial. Sec. 259.

This section re-enacts in substance sec. 11 of the Lunacy Act 1855 (18 & 19 Vict. c. 105).

Visiting committee.—Definition of, sec. 341, *post.*

Undertakes.—The obligation to bury a lunatic dying in an asylum rests on the visiting committee at common law.[1]

Pauper.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

In that case.—No fee for interment by direction of the committee is payable in other cases (sec. 258, subs. (3), *sup.*).

Shall pay.—The fees so paid are repayable by the union to which the lunatic was chargeable, or by the local authority liable for his maintenance (see sec. 297, *post*). Repayment of fees.

Burial fees.—Burial fees are not payable at common law,[2] and were forbidden by canon law.[3] But they may be legally due (*a*) by immemorial custom,[4] which must conform to the ordinary rules as to reasonableness and certainty on which the validity of a custom depends,[5] in particular parishes; or (*b*) by Act of Parliament. Burial fees.

260. For the purpose of the purchase of lands by visiting committees the Lands Clauses Acts are hereby incorporated with this Act, except the provisions relating to the purchase of land otherwise than by agreement, the sale of superfluous lands, the recovery of forfeitures, penalties, and costs, and access to the special Act, and the expression "promoters of the undertaking" wherever used in the Lands Clauses Acts shall mean a visiting committee, and the expression "special Act" shall mean this Act. Incorporation of Lands Clauses Acts.

This section re-enacts sec. 10 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

The purchase of lands.—See sec. 254, *ante.*

Visiting committees.—Definition of, sec. 341, *post.* Election of, sec. 253, *ante.*

[1] Cp. *Reg.* v. *Stewart*, 1840, 12 A. & E. 773 (reported as *Reg.* v. *Stennett*, 10 L.J. M.C. 10), where it was held that the duty did not lie upon the parish officers; *Reg.* v. *Price*, 1884, 12 Q.B.D., at p. 253.

[2] *Spry* v. *Gallop*, 1847, 16 M. & W., at p. 730.

[3] Cp. Spelman, *Tract de Sepult.* (1723), p. 179.

[4] *Andrewes* v. *Cawthorne*, 1744-45, Willes, 536; *Dean of Exeter's case*, 5 Ann. 1 Salk. 334.

[5] *Bryant* v. *Foot*, 1868, L.R. 3 Q.B. 497—a case as to marriage fees.

Sec. 261 (1), (2).

The Lands Clauses Acts, *i.e.* the Lands Clauses Consolidation Act 1845 (8 & 9 Vict. c. 18), the Lands Clauses Consolidation Acts Amendment Act 1860 (23 & 24 Vict. c. 106), the Lands Clauses Consolidation Act 1869 (32 & 33 Vict. c. 18), the Lands Clauses (Umpire) Act 1883 (46 & 47 Vict. c. 15), and any Acts for the time being in force amending the same. Cp. sec. 23 of the Interpretation Act 1889 (52 & 53 Vict. c. 63).

Effect of incorporation.

Incorporated.—This incorporation enables parties having limited interests to contract with the committee of visitors for the sale of land, although the committee have no compulsory powers of purchasing.[1]

The sale of superfluous lands.—As to the power of the visiting committee to retain superfluous lands, see sec. 265, *post.*

Power to take land on lease.

261. (1) A visiting committee, instead of purchasing any land or buildings which they are authorised to purchase, may take a lease thereof for any term not less than sixty years, at such rent and subject to such covenants as the committee think fit.

This subsection re-enacts the first clause of sec. 33 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Visiting committee.—Definition of, sec. 341, *post.*

Instead of purchasing, etc.—See sec. 254, subs. (1), *ante.*

Lease.—Lease includes underlease (sec. 341, *post*).

(2) A visiting committee, with the sanction of each local authority for whom they are authorised to act, may hire or take on lease from year to year, or for any term of years, at such rent and subject to such covenants as they think fit, any land or buildings for the employment of the patients in the asylum, or for the temporary accommodation of any pauper lunatics for whom the accommodation in the asylum is inadequate.

This subsection re-enacts the first part of sec. 11 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

See notes to subs. (1), *sup.*

Local authority.—Definition of, sec. 240, *ante.*

Asylum.—Definition of, sec. 341, *post.*

Pauper.—Definition of, sec. 341, *post.*

Lunatics.—Definition of, sec. 341, *post.*

[1] *Devenish* v. *Brown*, 1857, 26 L.J., N.S., Ch. 23.

(3) Lands and buildings hired or taken on lease under this section shall be deemed part of the asylum, and be subject to all existing provisions as to the asylum. Sec. 261 (3).

This subsection re-enacts the latter part of sec. 11 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

See notes to preceding subsections.

Shall be deemed, i.e. shall for all purposes be taken to be.[1] "Shall be deemed."

Be subject . . . asylum.—Lands and buildings acquired under this section are rateable under sec. 263, *post*; and it seems that profits made by a visiting committee by the admission of pauper lunatics from other counties or boroughs under secs. 243 and 269, or of private patients under secs. 241 and 271, or by the sale of the produce of land cultivated by the patients as part of their curative treatment, should be taken account of in the assessment. See notes to sec. 263, *post*.

262. The asylum to be provided by any local authority either solely or jointly, may be situate without the limits of the administrative area of the local authority, and if the asylum or any part thereof is so situate, the council and justices of the county, county borough, or borough to which the asylum wholly or in part belongs shall have full power and authority to act in the county or borough in which the asylum is situate, so far as concerns the regulation of the asylum and the powers conferred by this Act, as if the asylum were situate within the proper jurisdiction of such council and justices. Situation of asylum.

This section re-enacts sec. 34 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Asylum.—Definition of, sec. 341, *post*.

Local authority.—Definition of, sec. 240, *post*.

Justices.—Definition of, sec. 341, *post*.

County.—Definition of, sec. 341, *post*.

County borough.—Definition of, sec. 341, *post*.

263. Lands and buildings already or to be hereafter purchased or acquired for the purposes of any asylum, and Rating of asylums. (Act of 1889, s. 69.)

[1] Cp. *ex parte Walton*, 1881, 17 Ch. D., per James, L.J., at p. 756; and *Hill* v. *East and West India Dock Co.*, 1884, per Cairns, L.C., 9 App. Cas. 455, 456.

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any additional building erected or to be erected thereon, shall, while used for those purposes, be assessed to county, parochial, district, and other rates made after the commencement of this Act on the same basis and to the same extent as other lands and buildings in the same parish, township, or district.

This section re-enacts sec. 69 of the Lunacy Act 1889.

Lands.—Definition of, sec. 341, *post.*

Buildings.—See note to sec. 254, subs. (1), *ante.*

Purchased.—See sec. 254, subs. (1), *ante.* As to power to purchase, see sec. 260, *ante.*

Acquired, i.e. by hiring or lease (see sec. 261, *ante*).

Any additional building, etc.—See sec. 254, subs. (1), and sec. 255, *ante.*

While used for those purposes.—Lands and buildings hired or taken on lease under sec. 261 are deemed part of the asylum (sec. 261, subs. (3), *ante*), and are acquired for its purposes.[1]

Local authority hypothetical yearly tenant.

Be assessed . . . district.—The local authority will therefore be considered as a hypothetical yearly tenant, and any profits which it may make by the admission of pauper lunatics from other counties or boroughs (secs. 243 and 269), or of private patients (secs. 241 and 271), or by the sale of produce of land cultivated by the patients as part of the curative regimen of the asylum, will be taken into account in the assessment.[2] The increased rating value given to asylums under this section would be, it is conceived, such an "alteration in value" as to entitle overseers to proceed under sec. 47 of the Valuation (Metropolis) Act 1869 (32 & 33 Vict. c. 67).

Increased rating value "alteration in valuation" under Valuation (Metropolis) Act 1869.

The rates are payable in the same manner as other asylum expenses, viz. by the treasurer of the asylum out of the sum paid to him by the county treasurer.

Rating of premises occupied by officers of asylum.

In a county or borough lunatic asylum such parts of the premises as are occupied by the medical superintendent, medical officers, steward, chaplain, and other officers of the asylum whose income exceeds £150 a year, come within the scope of the Income Tax Acts. Such premises are not entitled to the benefit of the exemption in favour of Crown property, solely used for Crown purposes,[3]

[1] Cp. *Reg.* v. *Overseers of Fulbourn*, 1865, 6 B. & S. 451, reported as *Cambridge Pauper Lunatic Asylum* v. *Fulbourn Overseers*, in 12 L.T., N.S., 344.

[2] *Burton on Trent Corporation* v. *Churchwardens, etc., of Egginton*, 1889, 24 Q.B.D. 197; *Reg.* v. *School Board for London*, 1886, 17 Q.B.D. 738, approved by the House of Lords in *London County Council* v. *Churchwardens of Erith*, 1893, App. Cas. 562, overruling *Owens College* v. *Overseers of Chorlton upon Medlock*, 1887, 18 Q.B.D. 403; and cp. *Sculcoates Union* v. *Dock Co. at Kingston upon Hull*, 1895, App. Cas. 136. Such profits were not rateable under sec. 35 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), *Reg.* v. *Overseers of Fulbourn, ubi sup.*, note 1.

[3] *Bray* v. *Justices of Lancashire*, 1889, 22 Q.B.D. 484. See now exemptions from assessment to income tax under secs. 34 & 35 of the Finance Act 1894 (57 & 58 Vict. c. 30).

as in order to make good the exemption the purposes must be of that kind which by the constitution of the country fall within the province of Government, and are committed to the Sovereign, so that the occupiers, though not perhaps strictly servants of the Sovereign, might be considered *in consimili casu*.[1] In *Bray* v. *Justices of Lancashire*,[2] the Queen's Bench Division held that the magistrates might be assessed as a body. But the Court of Appeal did not decide this question, as it had not been argued before the Commissioners or raised by the case stated by them.

Payment of rates is part of the expenses of maintenance and should be charged to the maintenance fund.[3]

How lands to be conveyed.

264. Any lands acquired for the purposes of this Act may be conveyed to the local authority being a county council, or in cases where the local authority is the council of a borough, to the municipal corporation of the borough, or, where more than one local authority is interested, to the local authorities interested as joint tenants.

This section is based on sec. 36 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), sec. 2 of the County Property Act 1871 (34 & 35 Vict. c. 14), and sec. 72 of the Lunacy Act 1889.

Lands.—Definition of, sec. 341, *post.*

Required, etc.—See secs. 254, 260, and 261, *ante.*

Local authority.—Definition of, sec. 240, *ante.*

Power to retain land unsuitable or not required for asylum purposes. (Act of 1889, s. 68.)

265. Any lands or buildings which have been used for the purposes of an asylum, and have been found unsuitable, or are otherwise not required for such purposes, may, with the consent of a Secretary of State, and subject to such conditions as he thinks fit to impose, be retained by the local authority, and appropriated for any purposes for which the local authority is empowered to acquire land.

This section re-enacts sec. 68 of the Lunacy Act 1889.

Lands.—Definition of, sec. 341, *post.*

Buildings.—See note to sec. 254, subs. (1), *ante.*

Asylum.—Definition of, sec. 341, *post.*

Not required for such purposes.—The provisions in the Lands

"Not required for such purposes."

[1] *Mersey Docks and Harbour Board* v. *Cameron*, 1864-65, 11 H.L.C. 443.

[2] 1889, 22 Q.B.D. 484.

[3] *Reg.* v. *Dolby* (1), 1892, 2 Q.B. 301.

Sec. 266 (1).

Clauses Acts as to the sale of superfluous lands do not apply to visiting committees (see sec. 260, *ante*). As to power of visiting committee to cancel contracts for the purchase of lands which are unsuitable or not required, see sec. 268, *post*.

The consent.—As to how obtained, see sec. 272, *post*.

A Secretary of State.—"One of H.M. principal Secretaries of State." In practice the Home Secretary (see *ante* p. 169).

Local authority.—Definition of, sec. 240, *ante*.

Any purposes.—As to these purposes (1) in the case of a county council, see note to sec. 238, subs. (4), *ante*; (2) in the case of a borough council, see secs. 105 and 107 of the Municipal Corporations Act 1882 (45 & 46 Vict. c. 50), sec. 2, subs. (2) of the Public Libraries Act 1892 (55 & 56 Vict. c. 53), and sec. 175 of the Public Health Act 1875 (38 & 39 Vict. c. 55).

Repairs, alterations, improvements.

266. (1) The visiting committee of an asylum may, of their own authority, order all necessary and ordinary repairs. They may also, of their own authority, order all necessary and proper additions, alterations, and improvements which the asylum may require, to an amount not exceeding four hundred pounds in any one year.

This section re-enacts the first clause of sec. 38 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Visiting committee.—Definition of, sec. 341, *post*.

Asylum.—Definition of, sec. 341, *post*.

Where repairs, etc., may be ordered by visiting committee of their own authority.

Of their own authority . . . year.—Where the amount exceeds £100, but not £400, the order must be approved by three visitors (see subs. (2), *inf.*); where it exceeds £400, it must be authorised by the local authority under sec. 238, subs. (2), secs. 239 and 257, *ante*. The visiting committee is responsible for any nuisance that it may cause in the exercise of its statutory powers, unless the act done is absolutely necessary for the performance of the object with which they were conferred.[1] In *A.-G.* v. *Colney Hatch Asylum*,[1] an information was filed at the relation of the Edmonton Local Board of Health to restrain the visiting justices of the asylum from allowing the sewage from the asylum to pollute a certain stream. The facts of the pollution of the stream existing and being attributable in part to the sewage of the asylum being proved, the Court granted an injunction, but suspended its operation for three months to enable the defendants to make the necessary arrangements, with liberty to apply for an extension of time.

A.-G. v. *Colney Hatch Asylum.*

Ordinary.—Expenditure on extraordinary repairs must be reported to local authority (subs. (3), *inf.*).

[1] 1868, L.R. 4 Ch. 146. Cp. *National Telephone Company* v. *Baker*, 1893, 3 Ch. 186, as to the exercise of statutory powers by public bodies.

Repairs.—This term is presumably confined to repairs in the fabric of the asylum.

(2) An order for repairs, additions, alterations, or improvements to an amount exceeding one hundred pounds shall not be given, unless the order is approved and signed by at least three visitors at a meeting of the visiting committee duly summoned upon notice that the proposed expenditure is to be considered thereat.

This subsection re-enacts the first proviso to sec. 38 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

An order, etc.—See subs. (1), *sup.*

Three visitors.—As to visitors of licensed houses, see sec. 177, *ante.*

Meeting.—As to notices of meetings of visiting committee, see sec. 175, *ante.*

Visiting committee.—Definition of, sec. 341, *post.*

(3) Any expenditure incurred, except for repairs, shall be reported by the visiting committee to the local authority on whose behalf the expenditure was incurred.

This subsection re-enacts the second proviso to sec. 38 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Expenditure.—As to payment of expenses, see subss. (4) and (5), *inf.*

Repairs, i.e. necessary and ordinary repairs (see subs. (1)).

Visiting committee.—Definition of, sec. 341, *post.*

Local authority.—Definition of, sec. 240, *ante.*

(4) In the case of a district asylum, the visiting committee shall apportion expenses incurred under this section in the proportion in which each local authority has contributed to the erection of the asylum, or where any other proportion is fixed, by an agreement to unite them in the proportion so fixed; and where any such agreement only provides in what proportion the expense of repairs shall be borne, the expense of additions, alterations, and improvements shall be borne in the same proportion.

Sec. 266 (5).

This subsection re-enacts the third and fourth clauses of sec. 38 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

District asylum.—Definition of, sec. 341, *post.*

Visiting committee.—Definition of, sec. 341, *post.*

Expenses, etc.—See subss. (1)-(3), *sup.* As to payment of expenses, see subs. (5), *inf.*

Local authority.—Definition of, sec. 240, *ante.*

Asylum.—Definition of, sec. 341, *post.*

Agreement to unite.—See sec. 248, *ante.*

Repairs.—See subs. (1), *sup.*

Additions, etc.—See subs. (1), *sup.*

(5) The visiting committee shall make an order for payment of the expenses incurred under this section upon the treasurer of the local authority, or, in the case of a district asylum, shall make an order upon the treasurer of each local authority concerned for payment of the expenses apportioned to that local authority, and the treasurer upon whom the order is made shall pay the amount mentioned in the order out of the county or borough fund.

This subsection is based in substance on the second and fifth clauses of sec. 38 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Visiting committee.—Definition of, sec. 341, *post.*

The expenses, etc.—See subss. (1)-(3), *sup.* As to apportionment of in case of district asylum, see subs. (4), *sup.*

Local authority.—Definition of, sec. 240, *ante.*

District asylum.—Definition of, sec. 341, *post.*

Shall pay.—Under the Act of 1853 the expenses were made recoverable from the treasurer of the local authority by action brought by the treasurer or clerk of the asylum.

Dissolution of Agreement to unite.

Power to dissolve a union.

267. (1) A visiting committee, with the consent of a Secretary of State, may by a resolution passed by a majority of the whole number of the members of the committee at a meeting summoned upon notice that the

resolution is to be proposed thereat dissolve an agreement to unite.

This subsection re-enacts the first clause of, and first proviso to sec. 39 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Visiting committee.—Definition of, sec. 341, *post.*

Consent.—As to mode of obtaining, see sec. 272, *post.*

Secretary of State.—"One of H.M. principal Secretaries of State." In practice the Home Secretary (see *ante* p. 169).

The whole number.—The number of members is fixed in the agreement to unite (see sec. 248, subs. (1) (*a*), *ante*).

Meeting.—As to notice of meetings of visiting committee, see sec. 175, *ante.*

(2) Every local authority interested under an agreement to unite shall, before a dissolution of the agreement takes effect, elect a committee to provide asylum accommodation in accordance with the provisions of this Act.

This subsection re-enacts sec. 5 of the Lunacy Act 1855 (18 & 19 Vict. c. 105), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Local authority.—Definition of, sec. 240, *ante.*

Agreement to unite.—See sec. 248, *ante.*

A dissolution.—See subs. (1), *sup.*

Elect.—See secs. 169-71, *ante.*

Asylum accommodation . . . Act.—See secs. 238, 245 *et seq.*, *ante.*

(3) In case an agreement to unite is dissolved between any local authority not having an asylum and a local authority which has an asylum and is in receipt of an annual fixed payment as remuneration for any expenses incurred for the benefit of the local authority making the payment, such last-mentioned local authority may raise such a sum of money for compensation to the local authority receiving the payment as may be agreed upon and approved by the visiting committee by whom the union is dissolved.

This subsection re-enacts the second proviso to sec. 39 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Agreement to unite.—See sec. 248, *ante.*

Sec. 267 (4), (5).

Dissolved.—See subs. (1), *sup.*
Local authority.—Definition of, sec. 240, *ante.*
Not having.—See sec. 245, *ante.*
Asylum.—Definition of, sec. 341, *post.*
Visiting committee.—Definition of, sec. 341, *post.*

(4) Upon the dissolution of an agreement to unite the visiting committee may divide the real and personal property held for the purposes of the agreement among the several local authorities, between whom the agreement existed, in the proportion in which they contributed thereto or are interested therein, or in such proportions as the visiting committee, with the consent of a Secretary of State, think fit. And a sum of money of such amount, and to be raised by any of the local authorities parties to the agreement in such proportions as the committee, with the consent of a Secretary of State, approve, may be awarded to any local authority instead of a share or part of a share in such property.

This subsection re-enacts parts of the first and second clauses of sec. 39 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Dissolution.—See subs. (1), *sup.*
Agreement to unite.—See sec. 248, *ante.*
Visiting committee.—Definition of, sec. 341, *post.*
Property.—Definition of, sec. 341, *post.*
Local authorities.—Definition of, sec. 240, *ante.*
In the proportion . . . therein.—See secs. 248, subs. (1) (*b*) (*c*), *ante.*
Consent.—As to mode of obtaining, see sec. 272, *post.*
Secretary of State.—See note to subs. (1), *sup.*

(5) Any money to be raised under this section may be raised in the same manner and by the same means as other moneys appointed to be raised for the purposes of this Part of this Act.

This subsection re-enacts the third clause and part of the last proviso to sec. 39 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Any money . . . Act.—See sec. 274, *post*, as to borrowing powers.

Cancellation of Contracts.

Power to cancel contract.

268. (1) Where any lands contracted to be purchased or taken in exchange by a visiting committee are found unsuitable, or are not required, the committee, or any committee appointed in their place, may, with the consent of a Secretary of State, and upon payment of such sum, if any, as a Secretary of State approves, procure a release from the contract and execute a release to the other contracting party.

This subsection re-enacts the first and second clauses of sec. 41 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Lands.—Definition of, sec. 341, *post.*

Contracted to be purchased.—See sec. 254, subs. (1), *ante.*

Or taken in exchange.—In virtue of the incorporation of the Lands Clauses Acts by sec. 260, *ante.* A visiting committee has, however, no compulsory powers of acquiring lands (see the exceptions in sec. 260, *ante*).

No compulsory power of acquiring land.

Visiting committee.—Definition of, sec. 341, *post.*

Are found . . . required.—The provisions of the Lands Clauses Acts as to sale of superfluous lands do not apply to visiting committees (see sec. 260, *ante*). As to retention of unsuitable lands and buildings by visiting committee, see sec. 265, *ante.*

Consent.—As to mode of obtaining, see sec. 272, *post.*

Secretary of State.—"One of H.M. principal Secretaries of State" (see *ante* p. 169). In practice the Home Secretary.

The other contracting party, i.e. if he is willing to accept a release, the visiting committee is enabled by this subsection to give him one.

Other contracting party not bound to accept release.

(2) The consideration, if any, for such release, and all expenses in relation to the contract and release, shall be raised in the same manner as if the same were payable in respect of the purchase money of lands for the purposes aforesaid.

This subsection re-enacts the last clause of sec. 41 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Raised, etc.—See secs. 273, 274, *post.*

Sec. 269 (1), (2).

Admission of Pauper Lunatics from other Counties or Boroughs.

Power to contract for reception of lunatics.

269. (1) A visiting committee (in this section called the contracting committee) may contract with the manager of a licensed house, or subject as in this section provided with any other visiting committee (in this section called the receiving committee), for the reception into that house, or into the asylum of the receiving committee, of all or any of the pauper lunatics of the local authority for which the contracting committee is acting, or for the use and occupation of the whole or any part of the house, upon such terms as may be agreed.

This subsection is based on the first and second clauses of sec. 42 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), and the first part of sec. 64 of the Lunacy Act 1889.

Visiting committee.—Definition of, sec. 341, *post.*
Manager.—Definition of, sec. 341, *post.*
Asylum.—Definition of, sec. 341, *post.*
Pauper.—Definition of, sec. 341, *post.*
Lunatics.—Definition of, sec. 341, *post.*
Local authority.—Definition of, sec. 240, *ante.*

(Act of 1889, s. 64, subs. (2).)

(2) Where a contract between a visiting committee and the subscribers to a hospital for the reception of pauper patients into the hospital was subsisting on the twenty-sixth of August, one thousand eight hundred and eighty-nine, such contract shall continue in force, and on its expiration a new contract may be entered into with such subscribers subject to the provisions of this section.

Act of 1891, sec. 17. Contracts by town councils and the subscribers to a hospital.

17. Where a contract between the council of a borough and the subscribers to a hospital for the reception of pauper lunatics into the hospital was subsisting on the twenty-sixth day of August, one thousand eight hundred and eighty-nine, such contract, unless determined by the parties or one of them, shall be deemed to have continued in force since that date, and may be renewed subject to the same conditions and

with the same consequences as if the contract had been entered into by a visiting committee on behalf of the borough.

Sec. 269 (3), (4).

[Subs. (2) of sec. 269 re-enacts the second part of sec. 64 of the Lunacy Act 1889.

See notes to subs. (1).

Hospital.—Definition of, sec. 341, *post.*

Except as in this section provided, a visiting committee cannot enter into a reception contract with subscribers to a hospital (subs. (8), *inf.*).

26*th August* 1889.—The day on which the Act of 1889 passed.

Where a contract.—Sec. 17 of the Act of 1891 extended the saving in subs. (2) of the Act of 1890 to contracts between the council of a borough and a registered hospital.

Borough.—Definition of, sec. 341, *post.*

Shall be deemed, i.e. shall—unless determined by the parties or one of them—be taken for all purposes to have so continued.[1]

"Shall be deemed."

(3) A contract between a visiting committee and any other visiting committee or the manager of a licensed house or the subscribers to a hospital for the reception of the lunatics of the local authority for which the contracting committee is acting (hereinafter called a reception contract) shall not be made for more than five years, but such contract may be renewed subject to the provisions of this section.

This subsection re-enacts part of the first proviso to sec. 42 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), and sec. 10 of the Lunacy Act 1855 (18 & 19 Vict. c. 105).

See notes to subss. (1) and (2), *sup.*

(4) Where a reception contract has been made, whether before or after the passing of this Act, on behalf of a borough with the visiting committee of an asylum, and the contract is determinable by the parties thereto, or either of them, the contract shall not be determined without the consent of a Secretary of State.

(Act of 1889, sec. 71.)

[1] Cp. *ex parte Walton*, 1881, 17 Ch.D., per James, L.J., at p. 756, as to the meaning of the word "deemed"; and *Hill* v. *East and West India Dock Co.*, 1884, per Cairns, L.C., 9 App. Cas. 455, 456; and see similar use of the term in sec. 245, subs. (1), and sec. 261, subs. (3), *ante.*

Sec. 269 (5)-(8).

This subsection re-enacts sec. 71 of the Lunacy Act 1889.
See notes to preceding subsections.
The consent.—As to how obtained, see sec. 272, *post.*
A Secretary of State.—"One of H.M. principal Secretaries of State," *ante* p. 169. In practice the Home Secretary.

(5) A reception contract shall not be carried into effect until approved by a Secretary of State, and any reception contract may be determined by a Secretary of State.

This subsection re-enacts part of sec. 45, and the first part of the first proviso to sec. 42 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).
See notes to preceding subsections.

(6) A reception contract with the manager of a licensed house shall determine if the house ceases to be licensed.

This subsection re-enacts the latter part of the first proviso to sec. 42 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).
See notes to preceding subsections.
Manager.—Definition of, sec. 341, *post.*

(7) A reception contract shall not exempt the local authority for which the contracting committee is acting from the requirements of this Act as regards asylum accommodation if a Secretary of State determines the contract, although the term for which the contract was entered into has not expired.

This subsection re-enacts the second proviso to sec. 42 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).
See notes to preceding subsections.
The contracting committee.—See subs. (1), *sup.*
The requirements, etc.—See sec. 238, subs. (1), *ante.*

(Act of 1889, s. 64, subs.(1).)

(8) Except as in this section provided, a visiting committee shall not after the commencement of this Act enter into a reception contract with subscribers to a hospital.

This subsection re-enacts the first part of sec. 64 of the Lunacy Act 1889.

See notes to subs. (2), *ante*.

(9) Where a reception contract has been made by a visiting committee, the local authority for whom the visiting committee acts shall, while the contract subsists, defray out of the county or borough fund so much of the weekly charge agreed upon for each pauper lunatic as in the opinion of the visiting committee represents the sum due for the accommodation, not exceeding one-fourth of the entire weekly charge, in exoneration to that extent of the union to which the maintenance of any such pauper lunatic is chargeable.

This subsection re-enacts sec. 7 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

See notes to subs. (1), *ante*.

The weekly charge.—See sec. 283, *post*.

(10) Where a reception contract has been entered into by the visiting committee of an asylum with the subscribers to a hospital or the manager of a licensed house, the hospital or house may be visited by any members for the time being of the committee of the asylum.

This subsection re-enacts the last proviso to sec. 42 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

For definitions of terms, see notes to subs. (1), *ante*.

Cases where asylum is more than sufficient for pauper lunatics.

270. (1) Where it appears to the visiting committee of an asylum that the asylum is more than sufficient for the pauper lunatics who for the time being can be lawfully received, the committee may by resolution permit any other pauper lunatics to be received into the asylum.

This subsection is based on the first part of sec. 43 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Visiting committee.—Definition of, sec. 341, *post*.

Asylum.—Definition of, sec. 341, *post*.

Pauper.—Definition of, sec. 341, *post*.

Lunatics.—Definition of, sec. 341, *post*.

Sec. 270 (2), (3).

(2) A resolution under this section may require that no pauper lunatic be admitted thereunder without an undertaking by the minute of the guardians of the union to which the lunatic is chargeable for the payment of the expenses of maintenance of the lunatic, and of his burial if he dies in the asylum, as well as for his removal within six days after notice from the manager of the asylum.

This subsection is based on the latter part of sec. 43 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See notes to subs. (1), *sup.*

Guardians.—Definition of, sec. 341, *post.*

Union.—Definition of, sec. 341, *post.*

Chargeable.—See sec. 286, *post.*

Expenses of maintenance.—See sec. 287, *post.*

Burial.—See sec. 297, *post.*

Removal.—See sec. 66, *ante.*

Within six days.—"Days" means all days, Sundays, etc., included (see *ante* p. 117).

Manager.—Definition of, sec. 341, *post.*

(3) A resolution under this section may be rescinded or varied.

This subsection is based on the first part of sec. 43 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Admission of Private Patients.

Provisions as to private patients in asylums. (Act of 1889, s. 65, subs. (1).)

271. (1) Private patients may be received into any asylum upon such terms as to payment and accommodation as the visiting committee think fit. All enactments as to the conditions on which such lunatics may be received into hospitals or licensed houses shall be applicable to private patients received into such asylums.

This subsection re-enacts sec. 65, subs. (1) of the Lunacy Act 1889.

Private patient.—Definition of, sec. 341, *post*; and as to reception of under a justice's order, see sec. 13, *ante.*

Asylum.—Definition of, sec. 341, *post.*

Visiting committee.—Definition of, sec. 341, *post.*

All enactments, etc.—See secs. 4, 5 *et seq.*, *ante.*

Hospitals.—Definition of, sec. 341, *post.*

Sec. 271 (2).

(Act of 1889, s. 65, subs. (2).)

(2) An account of the amount, by which the sums charged for private patients received in the asylum exceed the weekly charges for pauper lunatics sent from or settled in any place, parish, or borough which has contributed to provide the asylum, shall be made up to the last day of each year, and the surplus, if any, after carrying to the building and repair funds such sums, and providing for such outgoings and expenses as the visiting committee consider proper, shall be paid to the treasurer of the local authority to which the asylum belongs, or in the case of an asylum belonging to several local authorities, to their respective treasurers in the proportions in which such local authorities or the justices of the counties and boroughs whose powers have been transferred to them have contributed to the asylum, and shall be applied as part of the county or borough fund.

This subsection re-enacts sec. 65, subs. (2) of the Lunacy Act 1889. For definitions, see notes to subs. (1), *sup.*

The sums charged.—As to assessment of profits derived from admission of private patients, see note to sec. 263, *ante.*

The weekly charges.—See sec. 283, *post.*

Borough.—Definition of, sec. 341, *post.*

Local authority.—Definition of, sec. 240, *ante.*

Approval of Secretary of State.

Mode of obtaining approval of Secretary of State.

272. For the purpose of procuring the approval of a Secretary of State to any agreement, contract, or plan requiring approval under this Act, the agreement, contract, or plan, with an estimate of the probable cost of carrying it into effect, shall be submitted to the Commissioners, and to the Secretary of State, and the Commissioners shall make such inquiries as they think fit, and shall report thereon to the Secretary of State, who may approve the agreement, contract, or plan, with or without modification, or may refuse his approval.

Sec. 273.

This section re-enacts the substance of sec. 45 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), sec. 5 of the Lunacy Act 1862 (25 & 26 Vict. c. 111), and sec. 66, subs. (2) of the Lunacy Act 1889.

The approval.—As to cases in which such approval has to be obtained, see sec. 242, subs. (3), sec. 243, subs. (4), sec. 250, sec. 254, subs. (2), sec. 255, sec. 258, sec. 265, sec. 267, sec. 268, subs. (1), sec. 269, subss. (4), (5), *ante*; sec. 275, *post*.

A Secretary of State.—"One of H.M. principal Secretaries of State," *ante* p. 169. In practice the Home Secretary.

Provisions for raising Expenses.

Payment of expenses.

273. The expenses to be paid and contributed by a local authority for the purposes of this Act shall be paid by the treasurer of the local authority out of the county or borough fund as the case may be to the treasurer of the asylum to which such local authority either alone or jointly pays or contributes.

This section re-enacts the third clause of sec. 46 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Local Authority.—Definition of, sec. 240, *ante*.

Borrowing Powers.

Power to borrow.

274. (1) For the purpose of paying any money payable under this Act, or for repaying any moneys borrowed under this Act or any former Act, authorising borrowing for purposes of asylum accommodation, the local authority may with the consent of the Local Government Board, and subject to the provisions of the Local Government Act 1888, and the Municipal Corporations Act 1882, according as the same respectively are applicable to the local authority, borrow on the security of the county or borough fund, and of any revenue of the local authority, or on either such fund or revenues or on any part of the revenues, such money as the local authority requires.

51 & 52 Vict. c. 41.
45 & 46 Vict. c. 50.

Sec. 274 (1).

This subsection re-enacts secs. 47 and 52 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Local authority.—Definition of, sec. 240, *ante.*

Section 69 of the Local Government Act 1888 (51 & 52 Vict. c. 41) provides, *inter alia*, as follows, viz. :—

Local Government Act 1888.

(1) The county council may, from time to time, with the consent of the Local Government Board, borrow, on the security of the county fund, and of any revenues of the council, or on either such fund or revenues, or any part of the revenues, such sums as may be required for the following purposes, or any of them, that is to say ;

. . . . . .

(*e*) For any purpose for which quarter sessions or the county council are authorised by any Act to borrow,

but neither the transfer of powers by this Act nor anything else in this Act shall confer on the county council any power to borrow without the consent above mentioned, and that consent shall dispense with the necessity of obtaining any other consent which may be required by the Acts relating to such borrowing, and the Local Government Board, before giving their consent, shall take into consideration any representation made by any ratepayer or owner of property rated to the county fund.

(2) Provided that where the total debt of the county council, after deducting the amount of any sinking fund, exceeds, or if the proposed loan is borrowed will exceed, the amount of one-tenth of the annual rateable value of the rateable property in the county, ascertained according to the standard or basis for the county rate, the amount shall not be borrowed, except in pursuance of a provisional order made by the Local Government Board and confirmed by Parliament.

(3) A county council may also from time to time, without any consent of the Local Government Board, during the period which was fixed for the discharge of any loan raised by them under this Act or transferred to them by this Act, borrow on the like security such amount as may be required for the purpose of paying off the whole or any part of such loan, or if any part of such loan has been repaid otherwise than by capital money for re-borrowing the amount so repaid, and for the purpose of this section "capital money" includes any instalments, annual appropriations, and sinking fund, and the proceeds of the sale of land [1] or other property, but does not include money previously borrowed for the purpose of repaying a loan.

(4) All money re-borrowed shall be repaid within the period fixed for the discharge of the original loan, and every loan for re-borrowing shall for the purpose of the ultimate discharge be deemed to form

[1] See also sec. 65, subs. (3) of the Local Government Act, cited *ante* p. 574.

Sec. 274 (2).

part of the same loan as the original loan, and the obligations of the council with respect to the discharge of the original loan shall not be in any way affected by means of the re-borrowing.

(5) A loan under this section shall be repaid within such period, not exceeding thirty years, as the county council, with the consent of the Local Government Board, determine in each case.

(6) The county council shall pay off every loan either by equal yearly or half-yearly instalments of principal, or of principal and interest combined, or by means of a sinking fund set apart, invested, and applied in accordance with the Local Loans Act 1875,[1] and the Acts amending the same.[2]

. . . . . .

(8) Where the county council are authorised to borrow any money on loan they may raise such money either as one loan or several loans, and either by stock issued under this Act or by debentures or annuity certificates under the Local Loans Act 1875,[1] and the Acts amending the same,[2] or, if special reasons exist for so borrowing, by mortgage, in accordance with secs. 236 and 237 of the Public Health Act 1875.[3]

(9) Provided that where a county council have borrowed by means of stock they shall not borrow by way of mortgage except for a period not exceeding five years.

(10) Where the county council borrow by debentures such debentures may be for any amount not less than five pounds.

. . . . . .

(12) Nothing in this section shall be taken to empower the Cheshire County Council to borrow on the security of any revenue estimated to accrue from the surplus funds of the River Weaver Navigation.

(2) The Public Works Loan Commissioners may, if they see fit, make any loan for the purposes of this Act to

[1] 38 & 39 Vict. c. 83.

[2] 48 & 49 Vict. c. 30, as to sinking funds.

[3] Secs. 236 and 237 of the Public Health Act 1875 (38 & 39 Vict. c. 55), referred to in subs. (8) above cited, provide as follows :—

Sec. 236.—Every mortgage authorised to be made under this Act shall be by deed, truly stating the date, consideration, and the time and place of payment, and shall be sealed with the common seal of the local authority, and may be made according to the form contained in schedule iv. to this Act, or to the like effect.

Sec. 237.—There shall be kept at the office of the local authority a register of the mortgages on each rate, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names and descriptions of the parties thereto as stated in the deed. Every such register shall be open to public inspection during office hours at the said office, without fee or reward ; and any clerk or other person having the custody of the same refusing to allow such inspection shall be liable to a penalty not exceeding five pounds.

the local authority upon the security of any fund or revenues applicable to the purposes of this Act. Sec. 275 (1)-(4).

This subsection re-enacts sec. 48 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Rules and Regulations.

275. (1) The visiting committee of an asylum shall within twelve months after the completion of the asylum prepare and submit to a Secretary of State general rules for the government of the asylum, and such rules when approved by a Secretary of State shall be printed and observed. General rules and regulations to be framed.

This subsection is based on the first and second clauses of sec. 53 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Visiting committee.—Definition of, sec. 341.

Asylum.—Definition of, sec. 341.

A Secretary of State.—"One of H.M. principal Secretaries of State," *ante* p. 169. In practice the Home Secretary.

General rules.—As to penalty for infringement of, see sec. 226, *ante.*

(2) The general rules of every asylum may be altered and varied with the approval of a Secretary of State. (Alteration of rules.)

This subsection re-enacts the third clause of sec. 53 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See notes to subs. (1), *sup.*

(3) The visiting committee shall also make regulations (not inconsistent with the general rules) setting forth the number and description of officers and servants and their respective duties and salaries. (Regulations as to duties, etc., of officers.)

This subsection re-enacts the fourth clause of sec. 53 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See notes to preceding subsections.

Officers and servants.—See sec. 276, *post.*

Salaries.—See sec. 276, subs. (5), *post.*

(4) The regulations may provide that any number of beds in such part of the asylum as the committee think fit (Regulations as to reserved beds.)

Sec. 275 (5), (6).

shall be reserved for the cases specified in the regulations, and in that case the asylum shall for the purposes of this Act, as respects the admission of cases not within the class for which beds are reserved, be deemed full when there are no vacant beds except those so reserved, but the committee may, if they think fit, fill any reserved beds.

This subsection re-enacts the sixth and seventh clauses of sec. 53 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See notes to preceding subsections.

"Deemed to be."

Deemed to be, i.e. shall be taken conclusively to be (see note to sec. 269, subs. (2), *ante*). As to effect of deficiency of room, see sec. 27, subs. (2), *ante*.

(Regulations as to contagious or infectious malady.)

(5) The regulations may also provide for the exclusion of any persons afflicted with any malady which the visiting committee deem contagious or infectious or coming from a place in which such a malady may be prevalent, and for the absence for a period not exceeding four days of a patient from the asylum by permission of the manager.

This subsection re-enacts in substance the last clause of sec. 53 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See notes to preceding subsections.

Query whether visiting committee can require guardians to certify.

Exclusion.—It is doubtful whether under this subsection the visiting committee have any power to require the guardians to certify in cases removed to the asylum under a magistrate's order that the patient is free from contagious or infectious diseases, or whether the expense of such certificates could be included by the justice in his order upon the guardians as a reasonable expense "in and about the examination and the inquiry" (see sec. 285, subs. (1), *post*). A visiting committee incurring such expenses would have to pay for them as part of the ordinary expenses of keeping up the asylum.

And for the absence, etc.—This clause is new; and see sec. 55, *ante*.

Days.—"Days" means all days, Sundays, etc., included (see *ante* p. 145).

Manager.—Definition of, sec. 341, *post*.

(Diet of patients.)

(6) The committee shall also determine the diet of the patients.

This subsection re-enacts the fifth clause of sec. 53 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Diet.

Diet.—The visiting Commissioners and visitors are to inquire as to the diet of pauper patients (sec. 187, *ante*).

Officers of Asylums.

Officers of asylums.

276. (1) The visiting committee of every asylum shall appoint:

(*a*) A chaplain, who shall be in priest's orders, and shall be licensed by the bishop of the diocese;

(*b*) A medical officer, who shall reside in the asylum and shall not be the clerk or treasurer of the asylum;

(*c*) A superintendent of the asylum, or, if there is more than one division, a superintendent of each division of the asylum, who shall be the resident medical officer or one of the resident medical officers of the asylum, or of the division of which he is appointed superintendent, unless a Secretary of State authorise the committee to appoint some other person than a medical officer to be superintendent;

(*d*) A clerk;

(*e*) A treasurer;

(*f*) Such other officers and servants as they think fit.

This subsection re-enacts parts of sec. 55 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

The visiting committee.—Definition of, sec. 341, *post.*

Asylum.—Definition of, sec. 341, *post.*

Shall appoint.—The committee may also appoint a minister of any religious persuasion to attend patients of that persuasion (subs. (2), *inf.*)

Chaplain, whether may be required to be resident.

Chaplain.—It will be observed that there is no provision in this subsection, as in subs. (2), *inf.*, in the case of the medical officer, requiring the chaplain to reside in the asylum; and although not resident he is an "officer of or in the asylum" within the meaning of sec. 280, subs. (1), for the purpose of superannuation allowances.[1] But the visiting committee may reasonably require him to be resident and appropriate a house to him within the asylum premises without exceeding the limits of their powers.[2] A resident chaplain is, however, rateable to the relief of the poor like any other occupant, as his

[1] *Reg.* v. *Hereford County Council*, 1891, 55 J.P. 72.

[2] *Congreve* v. *Overseers of Upton*, 1864, 4 B. & S. 857.

Sec. 276 (2).

house is not used for "the purposes of the asylum" (sec. 263, *sup.*). It is otherwise in the case of a medical superintendent, whose residence is obligatory.

Removal of, subs. (3), *inf.*; salary of, subs. (5), *inf.*

Licensed.—The licence is revocable by the bishop (see sec. 277, subs. (1), *post*). The visiting committee have power to dismiss a chaplain under subs. (3), *inf.*, even if the bishop refuse to revoke his licence.[1]

Diocese, i.e. in which the asylum is situated.

Medical officer.—Definition of, sec. 341, *post.* He must be registered under the Medical Acts 1858 and 1886. As to removal of, see subs. (3), *inf.* As to appointment of visiting physicians or surgeons, see subs. (4), *inf.*; as to salary of, see subs. (5), *inf.*; as to superannuation allowances, see sec. 280, *post.* The medical officer may not sign certificate accompanying reception order (see sec. 32, *ante*).

Shall reside.—*Aliter*, in case of chaplain. Since it is necessary that there should be a resident medical officer, and that he should be accommodated with a proper house, whether it be actually part of the main buildings of the asylum or not, it is if within the grounds appropriated to the asylum a necessary adjunct, and is therefore part of the asylum, and exempt from assessment to the inhabited house duty, under 48 Geo. III. c. 55, Sched. B., Case 4.[2] In *Jepson* v. *Gribble*,[3] a case is referred to heard on appeal from the Commissioners of Inland Revenue by Judges sitting in Serjeants' Inn, under 48 Geo. III. c. 161, sec. 73, where the medical superintendent's house was held to be not within the exemption, as although situated in the grounds it was separated from the asylum by a turnpike road which ran through them. Kelly, C.B., distinguished this case from *Jepson* v. *Gribble*, observing that inasmuch as the turnpike road ran between the asylum and the medical superintendent's house, it was clearly not part of the asylum. It seems doubtful, however, whether the decision in question can be supported. See the language of Blackburn, J., in *Congreve* v. *Overseers of Upton*,[4] "the words *in each asylum* . . . mean that his residence must be in grounds appropriated to the asylum, so as to be reasonably within it."

Residence of medical officer within asylum exempt from assessment.

Jepson v. *Gribble.*

A clerk.—The clerk may also be clerk to the visitors (see sec. 176, *ante*).

(Appointment of Non-conformist minister. Act of 1889, s. 77.)

(2) The visiting committee may appoint a minister of any religious persuasion to attend patients of the religious persuasion to which the minister belongs.

This subsection re-enacts the first part of clause 77 of the Lunacy Act 1889.

Visiting committee.—Definition of, sec. 341, *post.*

[1] *Reg.* v. *Justices of Middlesex*, 1842, 2 Q.B. 433.

[2] *Jepson* v. *Gribble*, 1876, 1 Ex.D. 151.

[3] *Ubi sup.*, at p. 153.

[4] *Ubi sup.*, p. 617, note 2, at p. 871.

Sec. 276 (3).

May appoint.—The obligation to appoint a chaplain under subs. (1), *sup.*, exists whether a minister is appointed under this subsection or not.[1] The committee might, it is believed, require the minister to be resident (see notes to subs. (1) (*a*), *sup.*).

Query whether minister might be required to be resident.

Minister.—As to removal of, see subs. (3); salary of, subs. (5). *Semble*, a minister appointed under this subsection is not an officer of the asylum for the purpose of superannuation allowances, under sec. 280, subs. (1), *post*. *A fortiori* this observation applies to a minister paying occasional visits to particular patients, under sec. 277, subs. (3), *post*. See note to officer in sec. 280, subs. (1), *post*. There seems to be no reason why visitation under sec. 277, subs. (3), *post*, should not be allowed even if a minister has been appointed under this subsection.

Query whether minister is officer of asylum.

(3) The committee may remove any person appointed under this section, and if the office of chaplain, medical officer, superintendent, clerk, or treasurer becomes vacant, the committee shall appoint a person to fill the vacancy subject to the restrictions affecting the original appointment, and they may in their discretion fill any vacancies among other officers and servants of the asylum.

(Removal and appointment of officers.)

This subsection re-enacts the fifth clause of sec. 55 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

The committee.—See subs. (1), *sup.*

Remove.—The visiting committee may remove a chaplain even if the bishop refuse to revoke his licence, under sec. 277, subs. (3), *post*.[2] No grounds for removal are specified. It is obviously desirable that in the case of asylums, a wide discretion in that matter should be left to the visiting committee.

In any case of removal for misconduct, the clerk of the asylum must, within a week, send a written notice to the Commissioners of the dismissal, and the cause (Rules of the Commissioners in Lunacy 1895, r. 25, *post*).

Notice of removal for misconduct.

Any person appointed.—These words are reproduced from the corresponding proviso in the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97). In the earlier Act, 9 Geo. IV. c. 40, sec. 30, the corresponding words were "officer, servant, or assistant." It was held, however, under that statute that a chaplain was an "officer" of the asylum.[3]

"Any person appointed."

The words "any person" of course include a minister of other bodies than the church appointed under subs. (2), *sup.* A minister visiting patients under sec. 277, subs. (3), *post*, is not appointed by the visiting committee, and is, therefore, not within this section.

[1] *Reg.* v. *Haslehurst*, 1884, 13 Q.B.D. 253.
[2] *Reg.* v. *Justices of Middlesex*, 1842, 2 Q.B. 433.
[3] *Ib.*, and cp. *Reg.* v. *Braintree Union*, 1841, 1 Q.B. 130.

Sec. 276 (4), (5).

But his visits could be prevented, if necessary, by the medical officer refusing to sanction them (see sec. 277, subs. (3), *post*).

Chaplain . . . treasurer.—See notes to subs. (1), *sup.*

The restrictions.—As to restrictions on appointment of chaplain, see subs. (1) (*a*), *sup.*, and notes; of medical officer, *ib.* (*b*); of superintendent, *ib.* (*c*); of clerk and treasurer, *ib.* (*b*).

Other officers, etc.—See subs. (1) (*f*) as to appointment of.

(Visiting physician or surgeon.)

(4) The committee may also appoint a visiting physician or surgeon to the asylum.

This subsection re-enacts the first part of the sixth clause of sec. 55 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

The committee.—See subs. (1), *sup.*

Also appoint.—As to other appointments, see subss. (1) and (2), *sup.*

A visiting physician or surgeon.—No person can hold either of these appointments until he is registered under the Medical Act 1858 (21 & 22 Vict. c. 90)—see sec. 36 of that statute—and also the Medical Act 1886 (49 & 50 Vict. c. 48). It is conceived that a visiting committee could appoint a visiting physician *and* a visiting surgeon under this subsection.

Query whether both could be appointed.

As to removal of.—See subs. (3), *sup.*

As to salary of.—See subs. (5), *inf.*

Not "officers" of asylum.

A visiting physician or surgeon would not, it is thought, be an officer for the purpose of superannuation allowances, under sec. 280, subs. (1), *post*. See note to "officer" in that subsection.

(Salaries, etc.)

(5) The salaries, wages, and remuneration of every person appointed under this section shall be fixed by the committee.

This subsection re-enacts the seventh clause of sec. 55 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

The salaries.—The Apportionment Act 1870 (33 & 34 Vict. c. 35) applies to such salaries, etc.

Every person appointed.—See subss. (1), (2), (4), *sup.*; and see note to "officer" in subs. (1) of sec. 280, *post*.

277. (1) The licence of the chaplain of an asylum shall be revocable by the bishop.

This subsection re-enacts part of the first clause of sec. 55 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Chaplain.—As to appointment and salary of, see sec. 276, subss. (1) (*a*) and (5), *ante*. As to removal of, see *ib.* subs. (3), *ante*.

Asylum.—Definition of, sec. 341, *post*.

Revocable.—The committee may dismiss a chaplain, and appoint a

successor to him, under sec. 276, subs. (3), *ante*, although the bishop refuse to revoke his licence, or to license the new appointee, and a mandamus will be refused to compel the visiting committee to reinstate the first appointee.[1] It is conceived that the remedy against a bishop improperly refusing to license a chaplain appointed by the visiting committee in such a case, or in any case, would be a mandamus. This subsection must be read together with sec. 276, subss. (1) (*a*) and (3), *ante*. So taken in conjunction, they vest the power of appointment and dismissal in the visiting committee, subject to the bishop's power of granting or withholding a licence. The working of these provisions might readily be impeded by a capricious exercise of the powers of either the bishop or the committee. But the Legislature "when it reposes confidence in particular functionaries assumes that they will act reasonably."[2]

(Chaplain may be dismissed though bishop refuse to revoke licence.)

The bishop, *i.e.* of the diocese in which the asylum is situated.

(2) The chaplain, or his substitute approved by the committee, shall perform in the chapel of the asylum, or in some other convenient place belonging to the asylum, divine service according to the rites of the Church of England on every Sunday, Christmas Day, and Good Friday. He shall also perform divine service, and such other services according to the rites of the Church of England as the committee direct, at such times as they appoint.

(The chaplain, performance of service by.)

This subsection re-enacts the second clause of sec. 55 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See notes to subs. (1), *sup.*

Substitute.—He must be in priest's orders (sec. 276. subs. (1) (*a*), *ante*); but query whether the bishop's licence would be necessary.

Divine service.—One of the duties of the visiting commissioners is to inquire whether divine service is performed in the asylum (see sec. 187, *ante*).

(3) If a patient is of a religious persuasion differing from that of the Established Church, a minister of his persuasion, at the request of the patient or his friends, may, with the consent of the medical officer and under such regulations as he approves, visit the patient.

(Visits by Nonconformist minister.)

[1] *Reg.* v. *Justices of Middlesex*, 1842, 2 Q.B. 433.

[2] S.C., per Coleridge, J., *ubi sup.*, at p. 445.

Sec. 278 (1)-(3).

This subsection re-enacts the third clause of sec. 55 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

A minister.—This subsection is of course primarily intended to meet cases where a minister has not been appointed under sec. 276, subs. (3). But there does not seem to be any reason why the visitation of particular patients by another minister should not be sanctioned under this subsection, although such an appointment has been made. A minister visiting patients under this subsection is not an "officer" of the asylum for the purposes of removal (sec. 276, subs. (3), *ante*), salary (*ib.* subs. (4)), or superannuation allowance (sec. 280, subs. (1), *post*). His visits could be stopped, however, by the medical officer withholding his consent.

Semble, visitation of particular patients by minister may be sanctioned.

Medical officer.—See notes to sec. 276, subs. (1) (*b*), *ante*.

Books and accounts.

278. (1) The clerk of the asylum shall keep all books and documents which the visiting committee are required to keep or direct to be kept.

This subsection re-enacts part of the first clause of sec. 58 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

The clerk.—See sec. 276, subs. (1) (*d*), *ante*.

Asylum.—Definition of, sec. 341, *post*.

All books.—See Rules of Commissioners in Lunacy 1895, rr. 1, 2, 7, *post*.

Visiting committee.—Definition of, sec. 341, *post*.

(Receipts and expenditure.)

(2) He shall also keep an account of the receipts and expenditure on account of the asylum.

This subsection is based on the first clause of sec. 58 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

An account.—As to audit, see sec. 18 of the Lunacy Act 1891, *post* p. 624; repealing sec. 279 of the Act of 1890. As to examination of, see sec. 173 *ante*.

(Annual abstract of account.)

(3) Before the thirtieth day of September in each year, or such other date as the Local Government Board appoint, he shall send an abstract of the account for the previous year, ending on the thirty-first day of March, or such other date as the Local Government Board appoint, to the Local Government Board, and to the Commissioners.

This subsection is based on the first clause of sec. 58 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by sec.

71 and sec. 86, subs. (1) of the Local Government Act 1888 (51 & 52 Vict. c. 41). Sec. 278 (4)-(7).

The Commissioners.—Definition of, sec. 341, *post.*

(4) The abstract shall contain such particulars and be in such form as the Local Government Board direct. (Form of abstract.)

This subsection is based on sec. 71, subs. (2), and sec. 86, subs. (1) of the Local Government Act 1888 (51 & 52 Vict. c. 41).

(5) Within one month from the receipt of the abstract a copy thereof shall be laid before both Houses of Parliament, if Parliament is then sitting, and if not, within one month from the commencement of the next session. (Abstract to be laid before Parliament.)

This subsection re-enacts in substance the last clause of sec. 58 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Within.—See *ante* p. 117.

One month.—"Month" means calendar month (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3).

If not . . . session.—This clause is new.

(6) The treasurer and every officer of an asylum who receives or expends money or goods on account of the asylum shall keep accounts of his receipts and expenditure. (Treasurer's accounts.)

This subsection re-enacts in substance sec. 59 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

The treasurer.—See sec. 276, subs. (1) (*e*), *ante.* As to examination of accounts, see sec. 173, *ante.* As to audits, see sec. 279, *inf.*

Every officer, etc.—This clause is new.

(7) This section shall not affect any order made by the Local Government Board before the commencement of this Act.

The commencement of this Act, i.e. 1st May 1890 (see sec. 3, *ante*).

279. *The accounts of every asylum belonging wholly or in part to a county council and of the visiting committee and officers thereof shall be subject to the provisions of the Local Government Act 1888, relating to the accounts of county councils.* Accounts of county asylums. 51 & 52 Vict. c. 41, s. 86 (1).

Sec. 279.

Act of 1891, sec. 18. Accounts of county asylums.

18. The provisions of the Local Government Act 1888, relating to the accounts of county councils and their officers, and to the audit of such accounts, shall apply to the accounts of every asylum belonging wholly or in part to a county council and of the visiting committee and officers thereof.

Sec. 279 of the Act of 1890 re-enacted sec. 86, subs. (1) of the Local Government Act 1888 (51 & 52 Vict. c. 41). It was repealed, however, by sec. 18 of the Lunacy Act 1891 in order to make it clear that the provisions of the Local Government Act 1888 as to audit apply to county asylums.

Local Government Act 1888, s. 71.

The provisions, etc.—The provisions of the Local Government Act 1888, relating to the accounts of county councils and their officers, and to the audit of such accounts, are contained in sec. 71. That section is as follows:—

(1) The accounts of the receipts and expenditure of county councils shall be made up to the end of each local financial year, as defined by this Act [*i.e.* the twelve months ending the 31st March (see sec. 73)], and be in the form for the time being prescribed by the Local Government Board.

(2) The provisions of the Municipal Corporations Act 1882, with respect to the return to the Local Government Board of the accounts of a council of a borough, and to the accounts of the treasurer of the borough, and to the inspection and abstract thereof, shall apply to the accounts of a county council, and of the treasurer and officer of such council, and the said provisions respecting the return to the Local Government Board shall extend to the return to that Board of a printed copy of the abstract of the said accounts.

(3) The accounts of a county council and of the county treasurer and officers of such council, shall be audited by the district auditors appointed by the Local Government Board in like manner as accounts of an urban authority and their officers under secs. 247 and 250 of the Public Health Act 1875, and those sections and all enactments amending them or applying to audit by district auditors, including the enactments imposing penalties and providing for the recovery of sums, shall apply in like manner as if, so far as they relate to an audit of the accounts of an urban authority and the officers of such authority, they were herein re-enacted with the necessary modifications; and, accordingly, all ratepayers and owners of property in the county shall have the like rights, and there shall be the same appeal, as in the case of such audit. Provided that the First Schedule to the District Auditors Act 1879 shall be modified in manner described in the Second Schedule to this Act.

Municipal Corporations Act 1882, s. 27.

The provisions of the Municipal Corporations Act 1882 (45 & 46 Vict. c. 50), referred to in the second subsection above cited, are contained in secs. 27, 28, and 233 of that Act, and are as follows:—

Sec. 27. (2) After the audit of the accounts for the second half of

each financial year the treasurer shall print a full abstract of his accounts for that year. Sec. 279.

Sec. 28. (1) The town clerk shall make a return to the Local Government Board of the receipts and expenditure of the municipal corporation for each financial year. Municipal Corporations Act 1882, s. 28.

(2) The return shall be made for the financial year ending on the 25th of March, or on such other day as the Local Government Board, on the application of the council, from time to time prescribe.

(3) The return shall be in such form and contain such particulars as the Local Government Board from time to time direct.

(4) The return shall be sent to the Local Government Board within one month after the completion of the audit for the second half of each financial year.

(5) If the town clerk fails to make any return required under this section, he shall for each offence be liable to a fine not exceeding twenty pounds, to be recovered by action on behalf of the Crown in the High Court.

(6) The Local Government Board shall in each year prepare an abstract of the returns made in pursuance of this section, under general heads, and it shall be laid before both Houses of Parliament.

Sec. 233. (3) The treasurer's accounts shall be open to the inspection of the council, and a member of the council may make a copy thereof or take an extract therefrom. s. 233.

(4) The abstract of the treasurer's accounts shall be open to the inspection of all ratepayers of the borough, and copies thereof shall be delivered to a ratepayer on payment of a reasonable price for each copy.

. . . . .

(6) A document directed by this Act to be open to inspection shall be so open at any reasonable time during the ordinary hours of business, and without payment, unless it is otherwise expressed.

(7) If a person having the custody of any document in this section mentioned—

(*a*) Obstructs any person authorised to inspect the same in making such inspection thereof as in this section mentioned; or

(*b*) Refuses to give copies or extracts to any person entitled to obtain the same under this section;

he shall, on summary conviction, be liable to a fine not exceeding five pounds.

Secs. 247 and 250 of the Public Health Act 1875 (38 & 39 Vict. c. 55), referred to in sec. 71 (3) of the Local Government Act 1888, above cited, are as follows:— Public Health Act 1875.

Sec. 247. Where an urban authority are not the council of a borough, the following regulations with respect to audit shall be observed: (namely), s. 247.

(1) The accounts of the receipts and expenditure under this Act of such authority shall be audited and examined once in every year

Sec. 279.

Public Health Act 1875, s. 247.

as soon as can be after the 25th day of March, by the auditor of accounts relating to the relief of the poor for the union in which the district of such authority or the greater part thereof is situate, unless such auditor is a member of the authority whose accounts he is appointed to audit, in which case such accounts shall be audited by such auditor of any adjoining union as may from time to time be appointed by the Local Government Board:

(2) There shall be paid to such auditor in respect of each audit under this Act, such reasonable remuneration, not being less than two guineas for every day in which he is employed in such audit, as such authority from time to time appoint, together with his expenses of travelling to and from the place of audit:

(3) Before each audit such authority shall, after receiving from the auditor the requisite appointment, give at least fourteen days' notice of the time and place at which the same will be made, and of the deposit of accounts required by this section, by advertisement in some one or more of the local newspapers circulated in the district; and the production of the newspaper containing such notice shall be deemed to be sufficient proof of such notice on any proceeding whatsoever:

(4) A copy of the accounts duly made up and balanced, together with all rate books, account books, deeds, contracts, accounts, vouchers, and receipts mentioned or referred to in such accounts shall be deposited in the office of such authority, and be open, during office hours thereat, to the inspection of all persons interested for seven clear days before the audit, and all such persons shall be at liberty to take copies of or extracts from the same, without fee or reward; and any officer of such authority duly appointed in that behalf neglecting to make up such accounts and books, or altering such accounts and books, or allowing them to be altered when so made up, or refusing to allow inspection thereof, shall be liable to a penalty not exceeding five pounds:

(5) For the purpose of any audit under this Act, every auditor may, by summons in writing, require the production before him of all books, deeds, contracts, accounts, vouchers, receipts, and other documents and papers which he may deem necessary, and may require any person holding or accountable for any such books, deeds, contracts, accounts, vouchers, receipts, documents, or papers to appear before him at any such audit or any adjournment thereof; and to make and sign a declaration as to the correctness of the same; and if any such person neglects or refuses so to do, or to produce any such books, deeds, contracts, accounts, vouchers, receipts, documents, or papers, or to make or sign such declaration, he shall incur for every neglect or refusal a penalty not exceeding forty shillings; and if he falsely or corruptly makes or signs any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury:

(6) Any ratepayer or owner of property in the district may be present at the audit, and may make any objection to such accounts

Sec. 279.

Public Health Act 1875, s. 247.

before the auditor; and such ratepayers and owners shall have the same right of appeal against allowances by an auditor as they have by law against disallowances:

(7) Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on the person making or authorising the making of the illegal payment, and shall charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person, or of any sum which ought to have been but is not brought into account by that person, and shall in every such case certify the amount due from such person, and on application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made:

(8) Any person aggrieved by disallowance made may apply to the Court of Queen's Bench for a writ of certiorari to remove the disallowance into the said court, in the same manner and subject to the same conditions as are provided in the case of disallowances by auditors under the laws for the time being in force with regard to the relief of the poor; and the said Court shall have the same powers with respect to allowances, disallowances, and surcharges under this Act as it has with respect to disallowances or allowances by the said auditors; or in lieu of such application, any person so aggrieved may appeal to the Local Government Board, which Board shall have the same powers in the case of the appeal as it possesses in the case of appeals against allowances, disallowances, and surcharges by the said poor law auditors:

(9) Every sum certified to be due from any person by an auditor under this Act shall be paid by such person to the treasurer of such authority within fourteen days after the same has been so certified, unless there is an appeal against the decision; and if such sum is not so paid, and there is no such appeal, the auditor shall recover the same from the person against whom the same has been certified to be due by the like process and with the like powers as in the case of sums certified on the audit of the poor-rate accounts, and shall be paid by such authority all such costs and expenses, including a reasonable compensation for loss of time incurred by him in such proceedings, as are not recovered by him from such person:

(10) Within fourteen days after the completion of the audit, the auditor shall report on the accounts audited and examined, and shall deliver such report to the clerk of such authority, who shall cause the same to be deposited in their office, and shall publish an abstract of such accounts in some one or more of the local newspapers circulated in the district.

Where the provisions as to audit of any local Act constituting a board of improvement commissioners are repugnant to or inconsistent with those of this Act, the audit of the accounts of such improvement commissioners shall be conducted in all respects in accordance with the provisions of this Act.

Sec. 280 (1).

Sec. 250. The accounts under this Act of officers or assistants of any local authority who are required to receive moneys or goods on behalf of such authority shall be audited by the auditors or auditor of the accounts of such authority, with the same powers, incidents, and consequences as in the case of such last-mentioned accounts.

Pensions.

Pensions to officers.

280. (1) The visiting committee may grant to any superintendent, chaplain, matron, or other officer or servant of the asylum, who is incapacitated by confirmed illness, age, or infirmity, or who has been an officer or servant in the asylum for not less than fifteen years, and is not less than fifty years old, such superannuation allowance as the committee think fit.

This subsection re-enacts the first clause of sec. 57 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as amended by sec. 12 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111).

The visiting committee.—Definition of, sec. 341, *post.*

Query whether officer has a right to superannuation allowance.

May.—It is conceived that an officer or servant of an asylum, in whose case the conditions prescribed by this section have been fulfilled, has a right to a superannuation allowance. There is no direct authority on the point. But the case appears to come within the principle laid down by Lord Cairns in *Julius* v. *The Bishop of Oxford*[1] that "where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the Legislature of the conditions on which they are entitled to call for its exercise, that power ought to be exercised, and the Court will require it to be exercised." See as confirming this view the discretion given to the visiting committee by this subsection as to the amount of the allowance.[2]

Grant.—As to mode of grant, see sec. 281, *post.*

Superintendent.—See sec. 276, subs. (1) (*c*), *ante.*

Chaplain.—See sec. 276, subs. (1) (*a*), *ante.*

Matron.—See subs. (2), *inf.*

"Officer."

Officer.—The term "officer" includes the other persons specifically enumerated in sec. 276, subs. (1), *ante.* A minister appointed under sec. 276, subs. (2), *ante*, and a visiting physician or surgeon, are not, it is thought, officers of the asylum for the purposes of this section. It will be observed that a distinction is drawn in sec. 276, subs. (3), *ante*, between persons appointed under the section and officers and

[1] 1880, 5 App. Cas., at p. 225.

[2] As to Metropolitan asylum district see now Poor Law Officers' Superannuation Act 1896 (59 & 60 Vict. c. 60), sec. 14.

Sec. 280 (2), (3).

servants of the asylum. See also the use of the words "every person appointed" in subs. (5) of that section, *ante*.

"Servant."

Servant.—This term would include both domestic and menial servants.

Actual residence in asylum buildings, whether necessary.

In the asylum.—These words do not make actual residence in the asylum buildings necessary where it is not otherwise required. It is sufficient if the applicant for a superannuation allowance is in fact an officer or servant of the asylum. See notes to sec. 276, subs. (1) (*a*), *ante*. Definition of "asylum," sec. 341, *post*.

Such . . . fit.—The discretion given to the committee by these words as to the amount of the allowance strengthens the view above stated as to the meaning of "may" in this subsection. The Apportionment Act 1870 (33 & 34 Vict. c. 35) is applicable to such allowances.

(2) Where the offices of superintendent and matron are held by man and wife, and a superannuation allowance has been granted to the superintendent, the committee may, if the matron has been an officer of the asylum for not less than twenty years, grant her such superannuation allowance as they think fit, although she is not incapacitated by illness, age, or infirmity: Provided that, if any such matron is appointed to a public office or to any office under this Act in respect of which she receives a salary, her superannuation allowance shall, so long as she receives such salary, be suspended or diminished by the amount of the salary according as the salary is or is not greater than the allowance.

This subsection re-enacts the first clause and the third proviso of sec. 13 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111).

Superintendent.—See sec. 276, subs. (1) (*c*), *ante*.

The committee.—See note to subs. (1), *sup*.

May.—See note to subs. (1), *sup*.

Officer.—See note to subs. (1), *sup*.

Asylum.—Definition of, sec. 341, *post*.

As they think fit.—See note to corresponding words in subs. (1), *sup*.

(3) A superannuation allowance shall not exceed two-thirds of the salary paid to the superannuated person at the date of superannuation and such further sum (if any) as the visitors think fit to grant, having regard to the

Sec. 281 (1)-(3).

value of the lodgings, rations, and other allowances enjoyed by the superannuated person.

This subsection re-enacts part of the first proviso to sec. 57 of the Lunatic Asylums Act 1853 (16 & 17 Vict. 97), and the second clause of sec. 12, and the first proviso to sec. 13 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111).

See notes to subss. (1) and (2), *sup.*

The visitors.—As to visitors of asylums, see sec. 169, *ante.*

Mode in which pension to be granted.

281. (1) A superannuation allowance shall not be granted unless seven clear days' notice of the meeting at which the same is to be granted, and of the intention to determine thereat the question of such grant, has been given, nor unless three visitors concur in and sign the order granting the same.

This subsection re-enacts the last proviso to sec. 57 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

A superannuation allowance.—See sec. 280, *sup.*

"Clear days."

Clear days.—This expression means that the time is to be reckoned exclusively of both the first and last days.[1]

Visitors.—See sec. 169, *ante*, as to visitors of asylums.

(2) A superannuation allowance granted under this Act shall be paid out of the county or borough fund as the case may be.

This subsection supersedes the second clause of sec. 57 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

(3) A superannuation allowance payable out of the county fund shall not be paid until the grant thereof has been confirmed by the county council.

This subsection supersedes the proviso to sec. 12 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

When allowance begins to run in favour of grantee.

Until . . . council.—It is conceived that while the allowance cannot be "paid" till after confirmation by the council, the allowance itself begins to run in favour of the grantee whenever it has been granted by the visiting committee.

282. When any officer is transferred from one asylum to another, wholly or in part belonging to the same local

[1] *Liffin* v. *Pitcher*, 1842, 1 Dowl., N.S., 767.

authority, his service in all such asylums shall be counted for the purpose of computing his pension, superannuation allowance, or gratuity for length of service, as if all such asylums had constituted only one asylum.

Sec. 283 (1). Service in several asylums of the same local authority. (Act of 1889, sec. 70.)

This subsection re-enacts sec. 70 of the Lunacy Act 1889.
Officer.—See note to sec. 280, subs. (1), *ante.*
Asylum.—Definition of, sec. 341, *post.*
Local authority.—Definition of, sec. 240, *ante.*

Part X.

EXPENSES OF PAUPER LUNATICS.

Weekly Expenses.

Weekly sum to be fixed.

283. (1) Every visiting committee shall fix a weekly sum, not exceeding fourteen shillings, for the expenses of maintenance and other expenses of each pauper lunatic in the asylum, and of such amount that the total of such weekly sums shall be sufficient to defray such expenses and also the salaries of the officers and attendants of the asylum, and such weekly sum may from time to time be altered.

Subs. (1) of sec. 283 re-enacts the first and second clauses and the second proviso of sec. 54 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Visiting committee.—Definition of, sec. 341, *post;* appointment of, see secs. 169 and 253, *ante.*

Not exceeding fourteen shillings.—As to fixing of greater sum by local authority, see subs. (2), *inf.*

Expenses of maintenance.—As to these, see sec. 287, subs. (1), *post.*

Pauper.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Asylum.—Definition of, sec. 341, *post.*

The salaries.—As to provision for, see sec. 276, subs. (5), *ante.*

The officers.—See sec. 276, subs. (1), and sec. 280, subs. (1), and notes, *ante.*

Attendants.—This word would seem to have a more restricted application than servants. It would not, for instance, include gardeners or coachmen.

Sec. 283 (2)-(4).

(2) If fourteen shillings a week is found insufficient for the purposes aforesaid, the local authority to whom the asylum belongs, may by order direct such addition to be made to the weekly sum as to the local authority seems necessary, and every such order shall be signed by the clerk of the local authority, and forthwith published in a local newspaper.

This subsection re-enacts the last clause of sec. 54 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

The local authority.—Definition of, sec. 240, *ante.*

Asylum.—Definition of, sec. 341, *post.*

Such addition.—It is conceived that a retrospective order cannot be made under this subsection.[1]

The clerk.—See definition of in return to a local authority in sec. 341, *post.*

(3) A committee may fix a greater weekly sum, not exceeding fourteen shillings, to be charged in respect of pauper lunatics other than those sent from or settled in a parish or place within the county or borough to which the asylum belongs.

This subsection re-enacts the first proviso to sec. 54 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Committee.—See subs. (1), *sup.*

May fix.—The order cannot, it is conceived, be made retrospective (see note to "such addition" in subs. (2), *sup.*).

Pauper.—Definition of, sec. 341, *post.*

Lunatics.—Definition of, sec. 341, *post.*

Other than those.—See secs. 243 and 269, *ante.*

County.—Definition of, sec. 341, *post.*

Asylum.—Definition of, sec. 341, *post.*

(4) Any excess created by the payment of such greater weekly sum may, if the visiting committee think fit, be paid over to a building and repair fund, to be applied by the committee to the altering, repairing, or improving the

[1] Cp. *R.* v. *Maulden*, 1828, 8 B. & C. 78; *R.* v. *St. Nicholas, Leicester*, 1835, 3 A. & E. 79; *Reg.* v. *Darton*, 1840, 12 A. & E. 78; *Bradford* v. *Wilts*, 1868, L.R. 3 Q.B.604; and see sec. 28 subs. (2), where there is a provision expressly enabling justices to give orders for maintenance a retrospective operation.

asylum, and the committee shall annually submit to the local authority a detailed statement of the manner in which such fund has been expended. Sec. 284.

This subsection re-enacts sec. 6 of the Lunacy Act 1862 (25 & 26 Vict. c. 111).

See notes to preceding subsections.

A building and repair fund.—As to powers of visiting committee in relation to repairs, see sec. 266, *ante*.

284. Where there is more than one asylum under the management and control of a visiting committee, the committee may, subject to any direction given by the local authority, provide that a uniform charge shall be made for the maintenance of lunatics in the several asylums, and that for that purpose any surplus arising on the accounts of one asylum shall be applied to meet the deficit arising on the accounts of another asylum. Uniform charge where more than one asylum.

This section re-enacts sec. 86, subs. (7) of the Local Government Act 1888 (51 & 52 Vict. c. 41).

Where there is more.—See sec. 169, subs. (3), *ante*.

Asylum.—Definition of, sec. 341, *post*.

Visiting committee.—Definition of, sec. 341, *post*; appointment of, secs. 169 and 253, *ante*.

Local authority.—Definition of, sec. 240, *ante*.

Lunatic.—Definition of, sec. 341, *post*.

To meet the deficit.—If there should be an overplus of profits, it belongs as between the visiting committee and the county council to the latter.[1]

Medical Fees and other Expenses.

285. (1) Whenever a justice directs a lunatic or alleged lunatic, whether a pauper or not, to be examined by a medical practitioner under the provisions of this Act, the justice directing the examination, or any other justice having jurisdiction in the place where the examination took place, may make an order upon the guardians of the union named in the order for payment of such reasonable Payment of medical fees and other expenses. (Act of 1889, s. 25, subs. (1).)

[1] Cp. *Proctor* v. *Cheshire County Council*, 1892, 56 J.P. 532.

Sec. 285 (1), (2)

remuneration to the medical practitioner and of all such other reasonable expenses in and about the examination and the inquiry, whether an order for the reception of the alleged lunatic in an institution for lunatics or workhouse ought to be made, and also if an order is made for payment of such reasonable expenses of carrying the order into effect as the justice thinks proper.

This subsection re-enacts sec. 25, subs. (1) of the Lunacy Act 1889. Cp. sec. 69 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Chairman of board of guardians, whether disabled from acting.

A justice.—Definition of, sec. 341, *post*. The chairman of a board of guardians appointed (sec. 25, *ante*) to sign reception orders is not, it is conceived, disabled from acting under this section.[1]

Directs.—Cp. sec. 21, subs. (2), and sec. 24, *ante*.

Lunatic.—Definition of, sec. 341, *post*.

Pauper.—Definition of, sec. 341, *post*.

Examined.—See sec. 13, subs. (3), and sec. 16, *ante*.

Medical practitioner.—Definition of, sec. 341, *post*.

An order.—The guardians may make the payment without an order (see sec. 295, *post*).

Guardians.—Definition of, sec. 341, *post*.

Union.—Definition of, sec. 341, *post*.

Query whether order could be made for fee of medical practitioner certifying as to contagious disease.

Reasonable expenses . . . inquiry.—The justice would not, it is submitted, be entitled to make an order for the payment of the fee of a medical practitioner required by the visiting committee to certify that a lunatic is free from any contagious or infectious disease under sec. 275, *ante*.

Institution for lunatics.—Definition of, sec. 341, *post*.

Carrying the order into effect.—As to recovery of expenses, see sec. 314, *post*.

(Act of 1889, s. 25, subs. (2).)

(2) The guardians upon whom an order is made under this section may recover any sums paid thereunder against the lunatic or alleged lunatic and his estate, and the person or authority legally liable for his maintenance as in the case of orders for maintenance under this Act.

This subsection re-enacts sec. 25, subs. (2) of the Lunacy Act 1889 (see notes to subs. (1), *sup.*).

Recover . . . estate.—See secs. 299, 300, *post*.

The person or authority.—As to recovery of expenses, see sec. 314, *post*.

[1] See 56 J.P. 15.

Sec. 286 (1).

Liability for Expenses of Maintenance.

Chargeability of pauper lunatic.

286. (1) Where a pauper lunatic is sent to an institution for lunatics, or where a lunatic in an institution for lunatics becomes a pauper, he shall be deemed to be chargeable to the union from which he was sent, until it has been established, as by this Act provided, that the lunatic is settled in some other union, or that it cannot be ascertained in what union the lunatic was settled, and the manager of the institution shall forthwith give to the authority liable for his maintenance notice that the lunatic has become destitute.

Act of 1891, sec. 22. Expenses of pauper lunatics.

22. The provisions of the principal Act for the payment of expenses in relation to pauper lunatics shall be applicable with respect to lunatics in institutions for lunatics who become paupers.

Origin of subsection.

Subs. (1) of sec. 286 re-enacts the first clause of sec. 95 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as amended by sec. 6 of the Irremovable Poor Act 1861 (24 & 25 Vict. c. 55), and sec. 33, subs. (1) of the Lunacy Act 1889. Under the Act of 1853 there was no provision dealing with the case of lunatics in institutions for lunatics who became paupers;[1] subs. (1) of sec. 286 met this difficulty. Sec. 22 of the Act of 1891 was passed in order to make it clear that the provisions of the Act of 1890 relative to the payment of the expenses of pauper lunatics applied to the case of lunatics who became paupers.

Section 22 of Act of 1891, why enacted.

Pauper.—Definition of, sec. 341.

Lunatic.—Definition of, sec. 341.

Institution for lunatics.—Definition of, sec. 341. As to removal of pauper lunatics to institutions for lunatics, see secs. 14 to 18, *ante*.

Ipswich Union v. *Macclesfield Union.*

Or where . . . pauper.—There was no provision corresponding to this in the Act of 1853. Accordingly where a female lunatic who had acquired a status of irremovability in the Ipswich Union was placed as a private patient in a county lunatic asylum at Macclesfield by friends who ceased two years later to maintain her, and the Macclesfield Union within which the asylum was situated gave notice to the Ipswich Union of the pauper being at Macclesfield, paid the maintenance for two years, and obtained a justice's order to recover the charges from the Ipswich Union, it was held by Hawkins and Stephen, JJ., that the case was not within sec. 95 of the Act of 1853,

[1] *Ipswich Union* v. *Macclesfield Union*, 1891, 55 J.P. 134.

Sec. 286 (2).

inasmuch as the lunatic had not been sent to the asylum under a justice's order.[1]

"Shall be deemed."

Shall be deemed.—These words seem here to mean "shall be taken as between the institution in which the lunatic is received and the union from which he was sent to be," etc.[2] See the words used in the alternative sense, as "shall be taken for all purposes," in sec. 245, subs. (1), and see sec. 261, subs. (3), *ante*. See also subs. (2), *inf.*

Time from which liability of union dates.

Guardians' right of recourse against relatives.

Chargeable.—As the subsection requires the management of the institution to give notice of the lunatic's destitution, it is conceived that the liability of the union for the maintenance dates from the time that such notice is given. The guardians have, it need hardly be observed, a right of recourse against the relatives of the lunatic for the expenses of his maintenance. As to grants to guardians out of the county fund in respect of pauper lunatics, see the Local Government Act 1888 (51 & 52 Vict. c. 41), sec. 24, subs. (2) (*f*), and the 50th Report of the Commissioners in Lunacy, p. 10.

As by this Act provided.—See secs. 288-290, *post.*

Settled in some other union.—See secs. 288, 289, *post.*

Or that . . . settled—See sec. 290, *post.*

The provisions, etc.—These are contained in secs. 286-314, inclusive.

(2) Every pauper lunatic who is chargeable to a union shall, while he resides in an institution for lunatics, be deemed for the purposes of his settlement to be resident in the union to which he is chargeable.

This subsection re-enacts the last clause of sec. 95 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), as amended by sec. 6 of the Irremovable Poor Act 1861 (24 & 25 Vict. c. 61).

For definitions, see notes to subs. (1).

"Shall be deemed."

Shall be deemed, i.e. shall be conclusively taken to be for the purposes of the settlement (see note to subs. (1)). Prior to the corresponding provision in sec. 95 of the Act of 1853, the time which a pauper lunatic spent in an asylum was excluded in the computation of the time of residence necessary to confer irremovability (see 12 & 13 Vict. c. 103, sec. 4).

Orders for maintenance of lunatics.

287. (1) The justice by whom any pauper lunatic is sent to any institution for lunatics under this Act, or any two justices of the county or borough in which the institution for lunatics where any pauper lunatic is confined is situate, or from any part of which any pauper lunatic

[1] *Ipswich Union* v. *Macclesfield Union*, 1891, 55 J.P. 134.

[2] Cp. *ex parte* Walton, 1881, 17 Ch.D. 756, per James, L.J.; and *Hill* v. *East and West India Dock Co.*, 1884, per Cairns, L.C., 9 App. Cas. 455, 456.

Sec. 287 (1), (2).

has been sent, or any two justices, being visitors of such institution, may make an order upon the guardians of the union to which the lunatic is chargeable, for payment to the treasurer, or manager of the institution, of the reasonable charges of the lodging, maintenance, medicine, clothing, and care (in this Act referred to as the expenses of maintenance) of such lunatic.

This subsection re-enacts in substance the first part of the first clause of sec. 96 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

The justice.—Definition of, sec. 341. See note to "justice" in sec. 285, subs. (1), *ante.*

Pauper.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341; and sec. 298, *post.*

Is sent.—See sec. 21, subs. (2), and sec. 24, *ante.*

Institution for lunatics.—Definition of, sec. 341, *post.*

County.—Definition of, sec. 341, *post.*

Is situate.—If the asylum is situate without the limits of the administrative area of the local authority to which it belongs, the justices of the county or borough to which it wholly or partly belongs have full powers to act (sec. 262, *ante*).

May make.—The word "may" has here a compulsory force. See note to sec. 280, subs. (1), *ante.*

An order.—The order may be made although the union is not within the jurisdiction of the justices (sec. 292, *post*). Also, the guardians may pay without an order (sec. 295, *post*). The order may be made *ex parte*;[1] *aliter*, in the case of orders under sec. 289, *post.*

The guardians.—Definition of, sec. 341, *post.*

The union.—Definition of, sec. 341, *post.*

To which the lunatic is chargeable.—In the corresponding provision in the Act of 1853 the order was to be made on the union from which the lunatic was sent.

The treasurer.—See sec. 276, subs. (1) (*e*), *ante.*

Manager.—Definition of, sec. 341, *post.*

The reasonable charges . . . lunatic.—It will be observed that only the expenses of the maintenance of the lunatic in the asylum *to* which he is sent can be the subject of an order under this subsection.

Only expenses of maintenance in asylum to which lunatic sent within subsection.

(2) Any such order may be retrospective or prospective, or partly retrospective and partly prospective.

This subsection re-enacts the first part of the first clause of sec. 96 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

[1] *Ex parte Monkleigh*, 1848, 17 L.J. M.C. 76; *Reg.* v. *Recorder of Northampton*, 6 B. & S. 653; *Reg.* v. *Bruce*, 1892, 2 Q.B. 136.

Sec. 287 (3).

No limit on extent to which order may be retrospective.

Retrospective.—No limit is imposed (as in sec. 289, *post*) as to the extent to which the order may be retrospective. In *Finch* v. *Guardians of York Union*[1] an order was made for the payment of expenses of maintenance for a person of more than twelve months previously to its date.

Prospective.—A prospective order extends to any place where the lunatic may be for the time being confined (sec. 293, *post*).

(3) An order under this section shall not be subject to appeal.

Why appeal not given.

Appeal.—An appeal is not given because an order under this section is of an interim character, and the guardians may relieve themselves from liability either under secs. 288 and 289, *post*, by showing that the lunatic has a legal settlement which two justices have power to inquire into and adjudge, and in adjudging which they would make an order for payment of all expenses incurred and for the maintenance of the lunatic upon the guardians of the union of settlement; or under sec. 290, *post*, if it cannot be ascertained in what parish the lunatic is settled, by applying for and obtaining an order of two justices upon the treasurer of the local authority within whose area the lunatic was found for those expenses and his maintenance.[2]

Action brought on order may be resisted.

Although an order under this section cannot be appealed against, an action brought upon it may be resisted by the guardians upon any legal ground.[3] The question might be raised whether, if a committee obtained an order and abandoned it, they would not be liable to recoup the guardians for any expenses which the latter had incurred with a view to ascertaining their legal position. It is conceived that this question should be answered in the negative.

Query whether if order abandoned guardians entitled to recoupment.

As to appeals, see secs. 301-313, *post*.

Inquiry into settlement.

288. Any two justices for the county or borough in which an institution for lunatics where a pauper lunatic is or has been confined is situate, or to which such institution being an asylum wholly or in part belongs, or from any part of which any pauper lunatic is or has been sent for confinement, may, at any time, inquire into the settlement of the pauper lunatic.

[1] 1876, 2 Q.B.D. 15.

[2] Per Cockburn, C.J., in *Reg.* v. *Recorder of Northamptom*, 1865, 6 B. & S. 660, 661, reported as *Kettering Union Guardians* v. *Northampton Lunatic Asylum*, 34 L.J. M.C. 198, 11 Jur., N.S., 999.

[3] *Finch* v. *Guardians of York Union*, 1876, 35 L.T. 360.

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This section re-enacts the first part of the first clause of sec. 97 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Justices.—Definition of, sec. 341. In the case of a union extending into two counties the justices of the one could not by this section inquire into the settlement of lunatics confined in the other, but query whether they could not do so under sec. 27 of the Poor Law Amendment Act 1867.

County.—Definition of, sec. 341, *post*. *Semble*, that the fact that two justices for the county sat in a borough while making an order, or *vice versâ*, does not affect their jurisdiction.

Institution for lunatics.—Definition of, sec. 341. An adjudication cannot be obtained in respect of a lunatic in a workhouse which is not within the definition of "institution for lunatics" in sec. 341, *post*.

Pauper.—Definition of, sec. 341, *post*.

Lunatic.—Definition of, sec. 341, *post*.

Meaning of "confined." Conditions of jurisdiction.

Is or has been confined.—"Confined" does not mean "lawfully confined," but *de facto* confined. The justices have jurisdiction to inquire into and adjudicate the settlement on two conditions, viz. that there is a pauper lunatic coming within the provisions of the section, and that he is, or has been, in actual confinement, and irregularities in the proceedings by which he came to be confined are immaterial.[1] An order for adjudication under sec. 289 may be made although the lunatic is no longer in confinement, *e.g.* where he has died or has been discharged.

Is situate.—As to where asylum is situate outside the limits of the administrative area of the local authority to which it belongs, see note to corresponding words in sec. 287, subs. (1), *ante*.

Asylum.—Definition of, sec. 341, *post*.

First inquiry and adjudication not necessarily final.

Inquire.—The first inquiry and adjudication are not necessarily final and conclusive. In *West Derby Union* v. *Vestry of Liverpool*[2] a second order was upheld where the settlement of the lunatic had changed since the first order was made. An order for adjudication is, however, conclusive of the settlement at its date.

Adjudication as to settlement.

289. If satisfactory evidence can be obtained as to such settlement in any union, such justices shall, by order, adjudge the settlement, and order the guardians of the union to pay to the guardians of any other union the expenses incurred in or about the examination of the lunatic and the bringing him before a justice or justices, and his removal and conveyance to or from any institution

[1] *Reg.* v. *Rhyddlan*, 1849, 14 Q.B. 327; *Reg.* v. *Minster*, 1850, *ib.* 349; *Reg.* v. *Crediton*, 1858, E. B. & E. 231; *Faversham* v. *Thanet*, 1862, 2 B. & S. 275.

[2] 1882, 46 J.P. 372.

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for lunatics (in this Act referred to as the incidental expenses), and all moneys paid by such last-mentioned guardians to the treasurer or manager of the institution for the expenses of maintenance of the lunatic, and incurred within twelve months previous to the date of such order, and, if the lunatic is still in confinement, also to pay to the treasurer or manager of the institution the reasonable expenses of the future maintenance of such lunatic.

This section re-enacts the second part of the first clause of sec. 97 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), and sec. 15 of the Lunacy Act 1855 (18 & 19 Vict. c. 105).

If satisfactory evidence.—As to where such evidence cannot be obtained, see sec. 290, *post.*

Such settlement.—An order of adjudication may be obtained although the lunatic is no longer in confinement, as, *e.g.*, where he has died or been discharged (see sec. 288, and note, *sup.*).

Union.—Definition of, sec. 341, *post.*

Justices.—Definition of, sec. 341, *post.*

Order adjudge.—As to jurisdiction of justices, see note to "is or has been confined" in sec. 288, *sup.*

Orders of adjudication and for expenses may be in same instrument.

Although the adjudication of the settlement must precede the making of an order for payment of expenses, the order for adjudication and the order for expenses may properly be contained in the same instrument.[1] An order of adjudication is conclusive of the settlement at its date, although[2] a second order may be obtained if the settlement has changed since the date of the first. It would seem that an order under this section ought not to be made except upon notice to the guardians whom it is sought to charge;[3] *aliter*, in the case of orders under sec. 287, *ante.* As to amendment of order on appeal, see sec. 308, *post.*

Semble, notice to guardians necessary.

The Court will not presume anything which will have the effect of vitiating an order.[4]

The guardians.—Definition of, sec. 341, *post.* As to right of guardians and officers interested to have access to lunatic to examine him as to settlement, see sec. 312, *post.* An order may be made on the guardians, although not without the jurisdiction of the justices (see sec. 292, subs. (1), *post*).

The expenses . . . lunatics.—See secs. 13-21, *ante.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Incidental expenses.—The qualifying clause in the latter part of the

[1] *Reg.* v. *Tyrwhitt*, 1848, 17 L.J. M.C. 141.

[2] *West Derby Union* v. *Vestry of Liverpool*, 1882, 46 J.P. 372.

[3] Cp. *Reg.* v. *Bruce*, 1892, 2 Q.B., per Wright, J., at p. 140.

[4] *R.* v. *Stockton*, 1833, 5 B. & Ad. 546.

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section, "incurred within, etc.," applies only to expenses of maintenance.[1] *Semble*, the costs of obtaining the order are not incidental expenses. But query whether, as the justices are a Court of Summary Jurisdiction (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 13, subs. (1)), such costs are not within their discretion under the Summary Jurisdiction Act (11 & 12 Vict. c. 43), sec. 18.

Treasurer.—See sec. 276, subs. (1) (*d*), *ante*.

Manager.—Definition of, sec. 341, *post*.

Expenses of maintenance of wife or child under 16 "relief."

Expenses of maintenance.—The expenses of maintenance of a wife, or children under sixteen, in a lunatic asylum by a union is "relief" within sec. 56 of the Poor Law Amendment Act 1854, and the time during which such relief is given must be excluded in computing residence.[2]

Scope and contents of order.

Incurred within, etc.—The order may be retrospective, therefore, to the extent of twelve months. Expenses incurred at different periods may be included in one order, if they were all incurred within the twelve months previous to the order.

The institution.—An order for future maintenance extends to any institution to which the lunatic is removed or in which he is for the time being confined (sec. 293, *post*).

Reg. v. *Cornwall.*

The reasonable expenses . . . lunatic.—The order for payment of the expenses of future maintenance should make it clear that the charges are those fixed by the visiting committee under sec. 283, *ante*. Thus in *Reg.* v. *Cornwall*,[3] an order of two justices adjudging the settlement of a pauper lunatic to be in P., and directing the overseers of P. to pay 5s. 6d. weekly to the treasurer of the county lunatic asylum, where the pauper was confined, "or *such other sum* as should thereafter be fixed on by the visitors of the said county lunatic asylum," was held bad for not showing that the sum of 5s. 6d. had been fixed on by the visitors. The reasonable charge for maintenance may probably vary. The justices can do no more than fix the sum which appears reasonable at the time being, and it is proper, in the case of a lunatic confined in a licensed house, to include in the order a power for future variation by the proprietor.[4] Future maintenance means maintenance after the date of the order; and it is conceived that the guardians can recover only what they have paid, not what they are liable to pay.

As to recovery of sums ordered to be paid, see sec. ~~341~~ 314, *post*.

If settlement cannot be ascertained a pauper lunatic may be made chargeable to a borough or county.

290. (1) If a pauper lunatic is not settled in the union from which he was sent to an institution for lunatics, and his settlement cannot be ascertained, and the lunatic was sent from a quarter sessions borough which is free from contributing to the payment of the expenses

[1] *Reg.* v. *Winster*, 1850, 14 Q.B. 344.
[2] *Reg.* v. *St. George, Bloomsbury*, 1863, 4 B. & S. 108.
[3] 1845, 14 L.J. M.C. 46.
[4] *Reg.* v. *Hatfield Peverel*, 1849, 14 Q.B. 298.

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of pauper lunatics chargeable to the county in which the borough is situate, or from a place not in such a borough, then the relieving officer of the union shall give to the clerk of the local authority within whose area the lunatic is found, ten days' notice to appear before two justices having jurisdiction within such area, at a time and place to be appointed in the notice.

This subsection is based on the first part of the first clause of sec. 98 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), sec. 45 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111), and sec. 33, subs. (2) of the Lunacy Act 1889.

Pauper.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Union.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

His settlement cannot be ascertained.—As to where there is satisfactory evidence of settlement, see sec. 289, *ante.*

Pauper lunatic not having ascertainable settlement in England or Wales, within subsection.

Any pauper lunatic not having any legal settlement in the union from which he is sent to an institution for lunatics, or any ascertainable legal place of settlement elsewhere in England or Wales, is a person whose "settlement cannot be ascertained" within the meaning of this subsection.[1] The legitimate child of such a person, if born in England or Wales, has, though unemancipated, a settlement in the place of birth.[2]

Removal of pauper lunatics born in Scotland, Ireland, etc.

Provision is made for the removal of pauper lunatics born in Scotland, Ireland, the Isle of Man, the Scilly Islands, or the Channel Islands, who have not acquired a settlement in England or Wales, but have become chargeable to any union here, to the settlement of birth by 8 & 9 Vict. c. 117. The provisions of that statute are not applicable until the lunatic, if confined in an institution for lunatics, has been discharged from confinement by order of the visitors. Nor does the fact that they are applicable appear to prevent the justices from adjudging a pauper lunatic chargeable to the local authority under this section.

As to the removal of criminal lunatics to Scotland and Ireland, see Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64), sec. 8, subs. (3), *post.*

Quarter sessions borough.—Definition of, sec. 341, *post.*

Free from contributing.—The condition of freedom from contribution is that the borough possesses or provides, or has commenced and is *bonâ fide* proceeding with the construction of a sufficient asylum to

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[1] *Somerset* v. ~~*Clapham*~~, 1863, 3 B. & S. 507.

[2] Cp. *Reg.* v. *St. Giles*, 1851, 17 Q.B. 636; *Reg.* v. *Preston*, 1840, 12 A. & E. 822; *Reg.* v. *Newchurch*, 1862, 3 B. & S. 107, referred to as *Newchurch* v. *Tottington Lower End*, 27 J.P. 245.

the satisfaction of a Secretary of State for the reception and care of the pauper lunatics in the borough (12 & 13 Vict. c. 82, sec. 2).

County.—Definition of, sec. 341, *post.*

The fact that a borough is in union with a county does not render it liable to contribute to the expenses of pauper lunatics chargeable to the county.

Clerk.—Definition of in relation to local authority, sec. 341, *post.*

Local authority.—Definition of, sec. 240, *post.*

Two justices.—The justices making the order must be justices of the county or borough made liable by the order.

What justices have jurisdiction.

(2) Upon the appearance of the clerk of the local authority, in person or by deputy, or in case of non-appearance upon proof of due service of the notice, any two or more such justices may inquire into the circumstances of the case, and adjudge the pauper lunatic to be chargeable to the local authority, and may order the treasurer of the local authority to pay to the guardians of any union the incidental expenses of the lunatic, and all moneys paid by such guardians to the treasurer or manager of the institution for lunatics for the expenses of maintenance of the lunatic, and incurred within twelve months previous to the date of the order, and if the lunatic is still in confinement, to pay to such treasurer or manager the expenses of the future maintenance of the lunatic.

This subsection re-enacts the second part of the first clause of sec. 98 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Clerk.—See subs. (1), *sup.*

Local authority.—See subs. (1), *sup.*

The notice.—See subs. (1), *sup.*

Such justices, i.e. having jurisdiction within the area of the local authority (subs. (1), *sup.*).

Inquiry contemplated.

May inquire into, etc.—All that is primarily contemplated by these words is an inquiry whether the lunatic's settlement cannot be ascertained. But the word "may" has probably here a permissive character, and it is conceived that the justices would be entitled to abstain from making an order in the case of Scotch, Irish, etc., pauper lunatics removable under 8 & 9 Vict. c. 117, if the guardians undertook to proceed promptly under that statute. The lunatic might in such a case be temporarily received into a workhouse under sec. 80, *ante.* Irregularities in the proceedings before the justices do not affect the validity of the order (see note to sec. 288, *ante*).

Sec. 290 (3), (4).

Order.—There is no appeal against an order under this section.[1] As it is by this subsection to be made on the treasurer of the local authority, it should presumably be served upon him. It is not necessary that any statements of the grounds of an order under this section should accompany it as in the case of orders under sec. 302, *post.*

Guardians.—Definition of, sec. 341, *post.*

Union.—Definition of, sec. 341, *post.*

Costs of order, whether "incidental expenses."

The incidental expenses.—See definition of in sec. 289, *ante.* It is conceived that the costs of obtaining the order might be claimed as "incidental expenses." The order as to incidental expenses may be retrospective, and the twelve months' limitation does not apply to it.

Only moneys actually paid recoverable.

All moneys paid.—It would seem that only moneys actually paid by the guardians, and not sums for which they are liable, should be paid to them.

Treasurer.—See sec. 276, subs. (1) (*d*), *ante.* The order should apparently be served on the treasurer of the local authority.

Manager.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

The expenses of maintenance.—See sec. 287, subs. (1), *ante.*

Future maintenance.—See note to same words in sec. 289, *ante.*

(3) Such justices may direct such further inquiries as they think fit to ascertain the union in which any pauper lunatic is settled, and delay their adjudication until after such further inquiries.

This subsection re-enacts the first proviso to sec. 98 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Justices.—See note to subs. (1), *sup.*

Union.—Definition of, sec. 341, *post.*

Pauper.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

(4) Every local authority to whom a pauper lunatic is adjudged to be chargeable may at any time thereafter inquire as to the union in which the lunatic is settled, and may procure him to be adjudged to be settled in any union.

This subsection re-enacts the second proviso to sec. 98 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Local authority.—Definition of, sec. 240, *ante.*

Pauper.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

[1] *Wilson* v. *Overseers of Liverpool*, 1851, 17 Q.B. 303.

Is adjudged.—See subs. (1), *sup.*

Union.—Definition of, sec. 341, *post.*

Union not estopped by submission to order.

Procure.—Notwithstanding that an order has been made under subs. (2), *sup.*, adjudging a pauper lunatic to be chargeable to a union, the union is not estopped by submission to it from afterwards obtaining an order adjudging the pauper to be settled in the union which obtained the first order, and requiring that union to pay for his future maintenance.[1]

As to reimbursement of expenses in such cases, see sec. 291, *inf.*

Provision for reimbursement of expenses of a lunatic afterwards adjudged to be settled in a union.

291. If after a pauper lunatic has been sent to an institution for lunatics, and has been adjudged chargeable to a local authority, the local authority procure the lunatic to be adjudged to be settled in a union, any two justices of the county or borough in which the institution where the lunatic is confined is situate, or from any part of which the lunatic was sent for confinement, or any two justices, being visitors of the institution, may make an order upon the guardians of the union for payment to the treasurer of the local authority of all expenses of maintenance of the lunatic paid by such treasurer to the treasurer or manager of the institution, and incurred within twelve months previous to the order, and, if the lunatic is still in confinement, also for payment to such treasurer or manager of the expenses of the future maintenance of the lunatic.

This section is based on the first clause of sec. 99 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), and sec. 45 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111).

Pauper.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Has been sent, etc.—See secs. 289, 290, *ante.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Local authority.—Definition of, sec. 240, *ante.*

Procure.—See sec. 290, *sup.*

Union.—Definition of, sec. 341, *post.*

Justices.—Definition of, sec. 341, *post.*

Visitors.—See *ante* pp. 499, 521.

"May."

May make.—It is conceived that "may" has here a compulsory character (see *ante* p. 628).

Order.—The order may be made on the guardians of a union not

[1] *All Saints, Poplar* v. *Middlesex,* 1860, 2 E. & E. 829.

Sec. 292 (1), (2).

within the jurisdiction of the justices (see sec. 292, subs. (1), *post*). As to recovery of sums ordered to be paid, see sec. 314, *post*.

Guardians.—Definition of, sec. 341, *post*.

Expenses of maintenance.—See sec. 287, subs. (1), *ante*. This provision applies only to the expenses of maintenance, and the cost of examination, removal, etc., are "incidental expenses" (see sec. 289, *ante*), and may be recovered, though more than the twelve months have elapsed.[1]

What expenses to be reimbursed.

Paid.—The local authority is only entitled to reimbursement of expenses (1) *actually* paid, and (2) *incurred* within twelve months previous to the date of the order.

Treasurer.—See sec. 276, subs. (1) (*d*), *ante*.

Manager.—Definition of, sec. 341, *post*.

Future maintenance, i.e. maintenance after the date of the order (see sec. 289, *ante*).

Orders as to lunatic paupers.

292. (1) Justices by this Act authorised to make orders for payment of expenses upon guardians of unions, may make such orders, although the union is not within the jurisdiction of the justices.

This subsection re-enacts sec. 100 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Justices . . . expenses.—See secs. 285, 287, 289, 291, *ante*.

Guardians.—Definition of, sec. 341, *post*.

Unions.—Definition of, sec. 341, *post*.

(2) Orders as to the settlement or chargeability of pauper lunatics and for payment of expenses may be obtained by the guardians of any union.

This subsection is based on sec. 7 of the Irremovable Poor Act 1861 (24 & 25 Vict. c. 55).

The settlement or chargeability.—See sec. 289, sec. 290, subs. (2), sec. 291, *ante*.

Payment of expenses.—See secs. 285, 286, 287-91, *ante*.

Guardians.—Definition of, sec. 341, *post*.

Union.—Definition of, sec. 341, *post*.

Order for maintenance to extend to any place where the lunatic is.

293. An order for payment of the future expenses of maintenance of a lunatic shall extend to the payment of such expenses to the treasurer or manager of any institution for lunatics to which he is removed or in which he is for the time being confined.

[1] Cp. *Reg.* v. *Winster*, 1850, 14 Q.B. 344.

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This section re-enacts the substance of sec. 101 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Future expenses.—See secs. 287, 289-91, *ante*, for orders as to payment of.

Lunatic.—Definition of, sec. 341, *post*.

Treasurer.—See secs. 276, subs. (1) (*d*), *ante*.

Manager.—Definition of, sec. 341, *post*.

Institution for lunatics.—Definition of, sec. 341, *post*.

The costs of pauper lunatics who are irremovable.

294. All incidental expenses and expenses of maintenance of a lunatic removed to an institution for lunatics who would at the time of his removal have been exempt from removal to the parish of his settlement or the country of his birth by reason of some provision in the Poor Removal Act 1846, as amended by subsequent Acts, shall be paid by the guardians of the union wherein the lunatic has acquired such exemption, and no order shall be made in respect of such lunatic under any provision contained in this or any other Act upon the guardians of the union in which the lunatic is settled while the above-mentioned expenses are to be paid and charged as herein provided.

9 & 10 Vict. c. 66.

Act of 1891, sec. 22. Expenses of pauper lunatics.

22. The provisions of the principal Act for the payment of expenses in relation to pauper lunatics shall be applicable with respect to lunatics in institutions for lunatics who become paupers.

Sec. 294 of the Act of 1890 re-enacts sec. 102 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Sec. 22 of Act of 1891. why enacted

Sec. 22 of the Act of 1891 was passed to remove the doubts raised by the heading of this part of the Act—"Expenses of Pauper Lunatics" (see *ante* p. 631),—the provisions in sec. 102 of the Act of 1853, which it reproduces in substance, and the decision in *Ipswich* v. *Macclesfield*,[1] as to whether it applied to the case of a private patient becoming a pauper.

Incidental expenses.—See secs. 289 and 290, subs. (2), *ante*.

Expenses of maintenance.—See sec. 287, subs. (1), *ante*.

Lunatic.—See general note, *sup.* For definition of, see sec. 341, *post*.

Institution for lunatics.—Definition of, sec. 341, *post*.

At the time.—The time of removal determines the liability. Accordingly, if irremovability has then been acquired, subsequent loss of that status is immaterial.[2]

[1] 1891, 55 J.P. 134.

[2] *Reg.* v. *St. Giles in the Fields*, 1860, 30 L.J. M.C. 13; and cp. *Thame Union* v. *Wandsworth Union*, 1872, 36 J.P. 167.

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Mere bodily removal not break of residence. *Reg.* v. *Whitby.*

His removal.—The mere bodily removal of a lunatic while unable to exercise any will of his own is no break of residence. In *Reg.* v. *Whitby*,[1] E.M., a single woman, having resided in the Richmond Union as a domestic servant for more than a year, was suddenly seized with mania and was taken by her mother to her parents' residence, which was in the Stepney Union. Next day she was sent to the Stepney Union house. Her settlement was in the Whitby Union. It was held that her status of irremovability, acquired by a year's residence in the Richmond Union, was not lost by her involuntary removal into the Stepney Union.

Effect of statutory provisions.

Exempt.—The effect of the statutory provisions with reference to irremovability may be shortly put thus. From and after the passing of the Poor Removal Act 1846 (9 & 10 Vict. c. 66)—viz. the 26th of August 1846—no person is to be removed, nor is any warrant[2] to be granted for the removal of any person from any parish or (24 & 25 Vict. c. 55, sec. 1) union in which such person shall have resided for one year (Union Chargeability Act 1865, 28 & 29 Vict. c. 79, sec. 8)[3] next before the application for the warrant; provided always that the time during which such person shall be a prisoner in a prison, or shall be serving Her Majesty as a soldier, marine, or sailor, or resides as an in-pensioner in Greenwich or Chelsea Hospitals, or shall be confined in a lunatic asylum or (12 & 13 Vict. c. 103, sec. 4) as a patient in a hospital, or during which any such person shall receive relief from any parish, or shall be wholly or in part maintained by any rate or subscription raised in a parish in which such person does not reside, not being a *bonâ fide* charitable gift, shall for all purposes be excluded in the computation of time hereinbefore mentioned, and that the removal of a pauper lunatic to a lunatic asylum under the provisions of any Act relating to the maintenance and care of pauper lunatics shall not be deemed a removal within the meaning of this Act; provided further (11 & 12 Vict. c. 111) that whenever any person has a wife or children having no other settlement than his or her own, such wife or children shall be removable from any parish or place from which he or she would be removable notwithstanding any provisions in the Poor Removal Act 1846, and shall not be removable from any parish or place from which he or she would not be removable by reason of any provision in that Act.

Relief given to or on account of the wife or of any child or children under the age of sixteen, not being blind or deaf or dumb, is to be considered as given to the husband or father, as the case may be; and similarly, relief given to or on account of any child or children under the age of sixteen of any widow is to be considered as

[1] 1870, L.R. 5 Q.B. 325. Where a status of irremovability has once been acquired, the onus of showing that it has been lost rests on those who contest it (*ib.*, at pp. 330 and 332). Cp. *Hendon Union* v. *Hampstead Guardians*, 1893, 62 L.J. M.C. 170.

[2] In case of sickness or accident the warrant must state that it will produce permanent disability. But query whether this applies to lunacy (*Reg.* v. *Manchester*, 1856, 6 E. & B. 919).

[3] Under the Act of 1845 the limit was five years; 24 & 25 Vict. c. 55, sec. 1, reduced it to three.

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Periods of lucid interval may be put together.

given to such widow. The period of a wife's confinement in an asylum at the cost of the guardians must be excluded in computing the time of the husband's residence.[1] Periods, however, in such a case during which the wife, enjoying lucid intervals, resided with her husband, who received at those times no relief, may be put together, so as to constitute the period of residence necessary to confer upon him the status of irremovability.[2]

The effect of the proviso, read in the light of the Act of 1846, is that a child or wife, so long as he or she continues a member of the parent's or husband's family, does not acquire the status of irremovability until after the death of such parent if he was removable.[3] When the father is dead the removability of an unemancipated child depends on the mother, who is the head of the family.[4] The proviso does not apply in favour of a woman living apart from her husband by mutual consent.[5]

No woman residing in any parish with her husband at the time of his death shall be removed, nor shall any warrant be granted for her removal from such parish for twelve calendar months next after his death, if she so long continue a widow (Poor Removal Act 1846, sec. 2).

No child under the age of sixteen years, whether legitimate or illegitimate, residing in any parish with his or her father or mother, step-father or step-mother, or reputed father, shall be removed, nor shall any warrant be granted for the removal of such child from such parish in any case where such father, mother, step-father, step-mother, or reputed father may not lawfully be removed from such parish (Poor Removal Act 1846, sec. 3).

Under the Poor Removal Act 1846, no person exempted from liability to be removed by reason of such exemption acquires any settlement in the parish (sec. 5).

The removal of any lunatic pauper to an asylum, licensed house, or registered hospital under the authority of the statutes in that behalf, or of any pauper, otherwise than under an order of removal, from his place of abode in any parish of a union to the workhouse of such union, shall not be deemed an interruption of the residence of such pauper within the meaning of the Poor Removal Act 1846, but the time spent in such lunatic asylum, licensed house, or registered hospital, or workhouse respectively, and the time during which any person shall be relieved at the charge of the common fund of the union, shall be wholly excluded from the computation of the time of

[1] *Reg.* v. *St. George's, Bloomsbury*, 1863, 32 L.J. M.C. 217.

[2] *Ipswich* v. *West Ham*, 1887, 20 Q.B.D. 407.

[3] *Reg.* v. *St. Mary Arches, Exeter*, 1862, 31 L.J., N.S., M.C. 77.

[4] S.C., *ubi sup.*; and cp. *Reg.* v. *St. Anne, Blackfriars*, 1853, 22 L.J., N.S., M.C. 137.

[5] *Reg.* v. *East Retford Union*, 1862, 32 L.J., N.S., M.C. 17, reported *sub nom.* *Reg.* v. *St. Clement Danes*, 7 L.T., N.S., 315; and *East Retford Union* v. *Strand*, 3 B. & S. 122. *Aliter*, in the case of desertion (24 & 25 Vict. c. 55, sec. 3), when irremovability is acquired after a year (29 & 30 Vict. c. 113, sec. 17). *Semble*, temporary absence on a visit does not constitute "living apart" within the meaning of *Reg.* v. *East Retford Union*.

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residence which, according to the provisions of such statute, will exempt a poor person from being removed (Poor Law Amendment Act 1849 (12 & 13 Vict. c. 103), sec. 4).[1] This section was passed for the purpose of regulating liabilities as between parishes of residence and parishes of settlement.

Where a child under the age of sixteen years, residing with its surviving parent, shall be left an orphan, and such parent shall at the time of death have acquired an exemption from removal by reason of a continued residence, such orphan shall, if not otherwise irremovable, be exempt from removal in like manner and to the same extent as if it had then acquired for itself an exemption from removal by residence (24 & 25 Vict. c. 55, sec. 2).

In the case of any poor person heretofore chargeable or hereafter becoming chargeable in any parish comprised in a union not being the parish of his settlement, the period of time during which he shall have resided in the parish of the settlement, if in the same union, shall not be excluded in the computation of the time of residence required to render him exempt from removal under 9 & 10 Vict. c. 66, sec. 1, and 24 & 25 Vict. c. 55, sec. 1. Cp. 27 & 28 Vict. c. 105, sec. 1.

Terms "country of his birth," why used.

The country of his birth.—The words are re-enacted from sec. 102 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), which was passed in consequence of the decision of the Court of Queen's Bench in *Reg.* v. *Arnold*,[2] under sec. 5 of the Poor Law Amendment Act 1845 (12 & 13 Vict. c. 103), in which the words were "the removal and maintenance of a lunatic pauper *having a settlement in England*."[3]

The Poor Removal Act 1846, *etc.*—The effect of the statutes is given above.

Guardians.—Definition of, sec. 341, *post*.

Definition of "union."

Union.—"Union" means any parish or union of parishes for which there is a separate board of guardians (sec. 341, *post*). This gets rid of the difficulty illustrated by *Reg.* v. *Overseers of Leeds*,[4] where it was held that owing to the plurality imported by the definition of "union" in the Poor Law Amendment Act 1849 (12 & 13 Vict. c. 103), sec. 26 (and see sec. 109 of 4 & 5 Will. IV. c. 76), a single parish having a separate board of guardians was not liable to bear the expenses of a pauper sent from it to a lunatic asylum, who, if sane and chargeable, would be irremovable.

Incidence of expenses when pauper cannot be removed to parish of settlement.

No order.—When the pauper cannot be removed to the parish of settlement or the country of his birth, the expenses are thrown upon the union in which he has a status of irremovability, and this impliedly gives the justices power to make an order on the guardians of that union for the payment of such expenses, although there are no express enabling words in the section.[5]

[1] Cp. *Reg.* v. *West Ward Union*, 1856, 7 E. & B. 21.

[2] 1852, 18 Q.B. 553.

[3] *Reg.* v. *Treasurer of Middlesex*, 1852, 18 Q.B. 560 n. (*b*).

[4] 1851, 17 L.T. 142.

[5] *Leeds* v. *Wakefield*, 1857, 7 E. & B. 258; even if the lunatic is at the time of removal in another union for a temporary purpose not sufficient to break the status of irremovability (*ib.*; and cp. *Reg.* v. *Bruce*, 1892, 2 Q.B. 140).

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295. The guardians upon whom an order might be made under this Act for the payment of any money may pay the same without an order, and may charge the same to such account as they could have done if an order had been made.

Charges may be paid without orders of justices.

This section re-enacts sec. 103 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

The guardians.—Definition of, sec. 341, *post.*

An order.—As to such orders, see secs. 285, 287, 289, 291, 294, *ante.*

296. The liability of any relation or person to maintain any lunatic shall not be taken away or affected, where such lunatic is sent to or confined in any institution for lunatics, by any provision herein contained concerning the maintenance of such lunatic.

The liability of relations of pauper not to be affected.

This section re-enacts sec. 105 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

The liability of any relation.—As to such liabilities, see Poor Relief Act 1601 (43 Eliz. c. 2), sec. 7; Poor Law Amendment Act 1834 (4 & 5 Will. IV. c. 76), secs. 57 and 58; Poor Law Amendment Acts 1850 (13 & 14 Vict. c. 101), sec. 5 (as amended by sec. 20 of the Divided Parishes and Poor Law Amendment Acts 1876 (39 & 40 Vict. c. 61), and 1868 (31 & 32 Vict. c. 122), sec. 36.

Liability of relations.

Or person.—These words include husband or wife. The history of the law as to their several liabilities in this matter deserves notice.[1] Prior to the Poor Law Amendment Act 1834, a husband could not be compelled by law to maintain his wife.[2] Section 56 of that statute made relief to the wife relief to the husband. But in the then existing statute, as to the maintenance of pauper lunatics in asylums, viz. 9 Geo. IV. c. 40, there was no saving for the liability of relations or other persons, nor was any such saving introduced into the Lunacy Act 1845 (8 & 9 Vict. c. 100). Neither was there any special provision in the Acts relating to the relief of the poor enabling justices to make orders on husbands for the relief of their wives if they became separately chargeable. Then came the Poor Law Amendment Act 1850 (13 & 14 Vict. c. 101), section 5 of which enabled justices to make orders upon husbands to contribute towards the maintenance of their wives when confined as pauper lunatics in asylums. The Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), sec. 105, enacted for the first time a saving section practically identical with the

History of liabilities of husband and wife.

Poor Law Amendment Act 1834.

Poor Law Amendment Act 1850.

Lunatic Asylums Act 1853.

[1] See an admirable note on this subject in 56 J.P., at p. 366.

[2] *Reg.* v. *Davison*, 8 Ann., 11 Mod. 269, unless of course he had deserted her, when the jurisdiction of the spiritual court to order alimony came in.

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Reg. v. *St. George's, Bloomsbury.*

Poor Law Amendment Act 1868.

Married Women's Property Act 1882.

present in regard to lunatics in asylums, and the Court of Queen's Bench in *Reg.* v. *St. George's, Bloomsbury*,[1] held that the maintenance of a wife in an asylum as a pauper lunatic is parish relief afforded to her husband within the meaning of the Poor Law Amendment Act 1834, sec. 36. Section 33 of the Poor Law Amendment Act 1868 empowered justices to make an order upon a husband to contribute to the maintenance of his wife if she is separately chargeable in consequence of being maintained by the union or parish in a pauper lunatic asylum. Section 20 of the Married Women's Property Act 1882 (45 & 46 Vict. c. 75) enables justices to make such orders on a wife for the maintenance of her husband out of her separate property as they may make against a husband if she became separably chargeable. It would seem therefore that an order may be made on a wife to maintain her husband as a pauper lunatic in an asylum out of her separate property.

Lunatic.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Any provision.—The provisions in question are contained in secs. 286-94, *ante.*

Expenses of removal, discharge, and burial.

297. The necessary expenses attending the removal, discharge, or burial of a pauper lunatic in any institution for lunatics, shall be borne by the union to which the lunatic is chargeable, or the local authority liable for his maintenance, and shall be paid by the guardians of the union or by the treasurer of the local authority.

This section re-enacts in substance sec. 120 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Necessary expenses.—The question as to whether any expenses were unnecessary could therefore be raised by the union or the local authority. See also Sale of Goods Act 1893, sec. 2, cited *ante* p. 16.

Removal.—See secs. 59, 61, 64, and 65-70, *ante.*

Discharge.—See secs. 73-80, *ante.*

Burial.—See secs. 258, 259, *ante.*

Pauper.—Definition of, sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Union.—Definition of, sec. 341, *post.*

Chargeable.—As to chargeability of pauper lunatics, see sec. 285, *ante.* As to requirement of undertaking by guardians to pay removal or burial expenses of pauper lunatics received into asylum when union is not within county borough to which the asylum belongs, see sec. 270, subs. (2), *ante.*

Local authority.—Definition of, sec. 240, *ante.*

Guardians.—Definition of, sec. 341, *post.*

[1] 1863, 4 B. & S. 108.

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Provisions of Act as to expenses to extend to pauper lunatics sent to asylums under any other Act.

298. The provisions of this Act for the payment of expenses in relation to pauper lunatics shall be applicable with respect to persons confined as pauper lunatics sent to any institution for lunatics under any other Act authorising their reception therein as pauper lunatics, and (save as herein otherwise provided concerning any lunatic who shall appear to have any real or personal property applicable to his maintenance) with respect to all other lunatics sent to any institution for lunatics under any order of a justice or justices made before the commencement of this Act, or under a summary reception order made by a justice under this Act, or under an order made by two or more Commissioners before or after the commencement of this Act, as if such last-mentioned lunatics were at the time of being so sent actually chargeable to the union from which they are sent.

This section re-enacts sec. 118 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

The provisions . . . expenses, i.e. the whole of Part X., secs. 283-314.

Pauper.—Definition of, sec. 341, *post.*

Lunatics.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Any other Act, e.g. sec. 8 of the Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64).

Save as herein.—See sec. 299, *post.*

Property.—Definition of, sec. 341, *post.*

Justice.—Definition of, sec. 341, *post.*

The commencement of this Act, i.e. 1st May 1890 (sec. 3, *ante*).

Summary reception order.—See secs. 13-16, *ante.*

An order by two or more Commissioners.—See sec. 23, *ante.*

Union.—Definition of, sec. 341, *post.*

Application of Lunatic's Property.

299. (1) If it appears to any justice that a lunatic, chargeable to any union, or local authority, has any real

Sec. 299 (1).

Power to recover expenses against lunatic's estate. (Act of 1889, s. 26, subs. (1).)

or personal property more than sufficient to maintain his family, if any, such justice may by order direct a relieving officer of the union, or the treasurer or some other officer of the local authority, to seize so much of any money, and to seize and sell so much of any other personal property of the lunatic, and to receive so much of the rents of any land of the lunatic as the justice may think sufficient to pay the expenses of maintenance and incidental expenses respectively incurred or to be incurred in relation to the lunatic.

This subsection re-enacts in substance sec. 26, subs. (1), and see sec. 76, subs. (2) of the Lunacy Act 1889.

Any justice.—Under sec. 26, subs. (1) of the Act of 1889 only *two* justices could make the order. Definition of "justice," sec. 341, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Chargeable.—As to chargeability to union, see secs. 285-89, *ante;* to local authority, see sec. 290, *ante.*

Union.—Definition of, sec. 341, *post.*

Local authority.—Definition of, sec. 240, *ante.*

Personal property.—Definition of, sec. 341, *post.* Freehold property cannot be seized under a distress warrant. The section does not provide for the case of property not belonging solely to the lunatic. It is suggested that in such a case the proper course would be for the guardians to bring an action against the lunatic, and then issue execution against his interest in the property.[1]

Receive . . . land.—The guardians cannot deal otherwise with such property than by bringing the lunatic under the jurisdiction in lunacy (sec. 116, subs. (1) (*e*), *ante*).

More than sufficient.—As to allowances to family of lunatic, see p. 370.

Semble, from the use of the words "to be incurred," *inf.*, that property may be dealt with under this section to meet *future expenses.* But as the guardians have a continuing power to recover expenses of past maintenance from time to time, it will be well that the power to anticipate expenses should be cautiously exercised.

Order.—As to order by County Court Judge, see sec. 300, *post;* and see note to "charges" in subs. (2), *inf.*

Relieving officer not to act without justice's order.

It seems scarcely necessary to add—but the point has arisen in practice[2]—that a relieving officer has no right to act under this subsection without a justice's order. Query whether the orders must be made in open Court. The point turns on whether the justice in

[1] Cp. 53 J.P. 174.

[2] Cp. 55 J.P. 186.

Sec. 299 (2).

making such an order can be said to hear, try, and determine a case within the meaning of sec. 20 of the Summary Jurisdiction Act 1879. It is suggested that to avoid difficulty the application should be made in open Court.[1]

Query whether order must be made in open Court.

The order cannot give to the person authorised a better right to the property than the lunatic had. An order will therefore not deprive a mortgagee in possession of his priority.

Mortgagee in possession.

Expenses of maintenance.—See sec. 287, subs. (1), *ante.* The amount of sums paid by guardians of the union to which a pauper lunatic was chargeable (though not the union in which he died), in respect of his maintenance at a lunatic asylum, is a debt recoverable in a creditor's action against his personal and real representatives, though no steps to recover payment of such expenses were taken by the guardians in his lifetime.[2] The guardians of a union to which a pauper lunatic is chargeable are entitled to recover only six years' arrears in respect of the sums paid by them for his maintenance in an asylum.[3] Either the subsection recognises a pre-existing liability or it creates a new obligation. In the former case the Statute of Limitation is clearly applicable. In the latter, although the subsection is silent on the point, it must also be held to apply, so as to avoid the anomalous distinction which a contrary decision would set up between ordinary and pauper lunatics.[4]

Expenses a debt against lunatic's estate.

Only six years' arrears recoverable.

Incidental expenses.—See sec. 289, *ante.*

(2) If any trustee, or the Bank, or any other society or person having possession of any property of a lunatic, shall pay or deliver to a relieving officer of a union, or to the treasurer or other officer of the local authority to which respectively a lunatic is chargeable, any money or other property of the lunatic, to repay the charges in this section mentioned, whether pursuant to an order under this section, or without an order, the receipt of such relieving officer, treasurer, or officer shall be a good discharge.

(Act of 1889, s. 26, subs. (2).)

This subsection re-enacts sec. 26, subs. (2) of the Lunacy Act 1889.

Trustee.—Definition of, sec. 341, *post.* Where money has been

[1] Cp. 55 J.P. 718.

[2] *Re Webster*, 1884, 27 Ch.D. 710, and cp. *re Marman's Trusts*, 1878, 8 Ch.D., per James, L.J., at p. 259.

[3] *Re Newbegin's Estate*, 1887, 36 Ch.D. 477; and cp. *re Harris*, 1880, 49 L.J. Ch. 327. The holders of the fund cannot be obliged to set up the Statute of Limitation against themselves (*re Gibson*, 1871, L.R. 7 Ch., per James, L.J., at p. 53.

[4] *Re Newbegin's Estate, ubi sup.*, at p. 482.

Sec. 299 (2).

paid into Court under the Trustee Relief Acts, the Court is placed in the position of trustee and may order the payment thereout on petition by the guardians of the expenses of maintenance,[1] if it think proper, without an application in lunacy.[2] The Court includes not only the Chancery Division, but also the Lancaster Court of Chancery,[3] and the Durham Court of Chancery.[4]

The Bank, i.e. of England (see sec. 341, *post*).

Lunacy "sickness" within friendly society's rules, unless expressly excluded.

Society.—Lunacy is "sickness" within the meaning of the rules of a friendly society unless expressly excluded.[5] The object of such societies is to secure their members against total or partial incapacity to earn their livelihood, and lunacy[6] causes such incapacity. Even if sickness does not include lunacy for poor law purposes,[7] the object of poor law administration in the matter in question is quite different from that of friendly societies, viz. to prevent the removal of a pauper lunatic if his chargeability were owing to such sickness or accident as would *primâ facie* only be temporary.[8]

Property.—Definition of, sec. 341, *post*.

Lunatic.—Definition of, sec. 341, *post*.

Section permissive only.

Shall pay or deliver.—The section is permissive only,[9] and the trustee, bank, or society cannot be compelled to pay the money or obey the order. A difficulty of this kind might be met in the case of an application after the death of the lunatic, by administration proceedings.[10] In other cases the only available course would seem to be to bring the lunatic within the jurisdiction in lunacy under sec. 116, subs. (1) (*e*), *ante*. If, however, the trustee, bank, or other society pay or deliver the property to any third party, the cost of maintenance (up to the six years' limit, see p. 655) can be recovered by the guardians as a debt.[11] The lunatic is of course personally liable to the guardians for the cost of his maintenance, after his discharge.

[1] *Re Upfull's Trust*, 1851, 3 Mac. & G. 281; *re Parker*, 1853, 2 W.R. 139; *re Ward's Estate*, 1854, *ib.* 406; *re Drewery's Trust*, 1854, *ib.* 436.

[2] *Re Buckley's Trusts*, 1860, Johns. 700; *re Coleman's Trusts*, 1866, 14 L.T., N.S., 587.

[3] *Re Edwards*, 1879, 10 Ch.D. 607.

[4] Palatine Court of Durham Act 1889 (52 & 53 Vict. c. 147), sec. 6.

[5] *Burton* v. *Eyden*, 1873, L.R. 8 Q.B. 295; *Caistor Union* v. *Cleaver*, 1892, 56 J.P. 503. The justices have no jurisdiction to make an order where the pauper lunatic's right is disputed (*Reg.* v. *Richardson*, 1894, 2 Q.B. 323). Where an order has been made without jurisdiction, the remedy is an appeal, and the justices cannot refuse to issue a distress warrant (*Reg.* v. *Swindon*, 1878, 42 J.P. 407).

[6] *Burton* v. *Eyden*, *ubi sup.* The judges treat lunacy and insanity apparently as convertible terms. Query whether insanity not causing total or partial inability to earn a livelihood would be sufficient.

[7] Blackburn, J., said, *ubi sup.*, at p. 298: "It seems to have been assumed that lunacy was sickness" for poor law purposes. But see *Reg.* v. *Manchester*, 1856, 6 E. & B., at p. 927; and *Hunslet* v. *Dewsbury*, 1857, 26 L.J. M.C. 3 n.

[8] *Burton* v. *Eyden*, *ubi sup.*

[9] Per Chitty, J., in *re Newbegin's Estate*, 1887, 36 Ch.D., at p. 481; and cp. 53 J.P. 299, 300.

[10] Cp. *re Mary Burrell*, 1858, 1 Sw. & T. 64; *Lambeth Union* v. *Bradshaw*, 1886, 50 J.P. 472; *re Eccles*, 1889, 15 P.D. 1; *Windeatt* v. *Sharland*, 1871, L.R. 2 P. & D. 217; *re Reeves*, 1890, 55 J.P. 24; *Mile End Guardians* v. *Findlay*, 1863, 3 Sw. & Tr. 265; *re Slumbers*, 1865, 4 *ib.* 32; *re Everley*, 1892, Prob. 50.

[11] Cp. *re Marman's Trusts*, 1878, 8 Ch.D. 256, 259; *re Webster*, 1884, 27 Ch.D. 710; *re Newbegin's Estate*, 1887, 36 Ch.D. 483.

Union.—Definition of, sec. 341, *post.*

Local authority.—Definition of, sec. 240, *ante.*

Chargeable.—As to chargeability to union see secs. 285-89, *ante*; to local authority, see sec. 290, *ante.*

The charges.—See subs. (1), *sup.*, and notes to "expenses of maintenance."

An annuity or other periodical payment to which any pauper lunatic is entitled may be paid to the guardians in liquidation of the cost of his relief by the trustee or person bound to make such payment (Divided Parishes and Poor Law Amendment Act 1876 (39 & 40 Vict. c. 61), sec. 23); and any expenses incurred by guardians in relief of a pauper lunatic who is a member of a benefit or friendly society[1] may be recovered as a debt from the lunatic or his estate, and the managing body of the society may, after notice from the clerk of the guardians, pay to them any sums to which the lunatic may be entitled, and will be exonerated by such payment. The guardians may, in case of refusal to make any payments on the part of any trustee, manager, or other person, apply to petty sessions, after having declared the relief to be given on loan (*ib.*).[2]

The provisions above noted do not apply to any moneys which a pauper lunatic, having a wife or other relative dependent upon him for maintenance, may be entitled to receive as a member of any friendly or benefit society (Poor Law Amendment Act 1879, 42 Vict. c. 12, sec. 1).

300. An order may be made by a Judge of County Courts upon an application by the guardians of any union for payment of the expenses incurred by them under this Act in relation to a lunatic, and such order may be enforced against any property of the lunatic in the same way as a judgment of the County Court.

Order by County Court Judge. (Act of 1889, s. 76, subs. (3).)

This section re-enacts sec. 76, subs. (3) of the Lunacy Act 1889.

An order.—As to scope of order, see sec. 299, *ante.*

Application.—Where the property consists of money paid into Court, or invested by order of the Judge under the County Court Rules 1889, Ord. ix. r. 21, the application need not be made by petition. The clerk of the guardians may apply in person, and the Judge, on such evidence of right and identity as he may think necessary,

Procedure on application.

[1] Whether registered or unregistered is immaterial (*Merthyr-Tydvill* v. *Cambrian Lodge*, 1881, 45 J.P. 220). The provision in the text does not apply to a trade union. Only cases in which there was a legal claim to a particular payment are within its range (*Winder* v. *Kingston upon Hull*, 1888, 52 J.P. 535).

[2] See Macmorran and Lushington's Poor Law Orders, and see note 7, p. 656.

Sec. 301 (1).

may make such order as he deems just (cp. *ib.* r. 22). Where the property consists of money or any valuable security in the possession of or belonging to the lunatic, and not in the former case paid into Court or invested under the Judge's order, the guardians may, as an alternative to seizing it under sec. 299, subs. (1), *ante*, recover it as a debt in the County Court. The guardians are only entitled to be reimbursed the amount expended by them in the relief of the pauper lunatic during the twelve months preceding such seizure, or proceedings for recovery, as the case may be (Poor Law Amendment Act 1849, 12 & 13 Vict. c. 103, sec. 16).

Guardians may reimburse themselves for burial expenses.

The guardians may also reimburse themselves under the same section, in the case of a pauper lunatic's death, for his burial expenses, and the expenses of his maintenance for twelve months prior to his decease, by applying for a grant of administration as creditors.[1]

Guardians.—Definition of, sec. 341, *post.*

Union.—Definition of, sec. 341, *post.*

The expenses, i.e. the expenses of maintenance and incidental expenses (see sec. 299, subs. (1)), under the Poor Law Amendment Act 1849, *v. sup.* Only twelve months' expenses are recoverable. In other cases six years' arrears may be recovered in the County Court, as under sec. 299, subs. (1).

Incurred.—The County Court can order payment only of expenses already incurred.

Lunatic.—Definition of, sec. 341, *post.*

Enforced.—As to enforcement of County Court judgments, see County Courts Act 1888 (51 & 52 Vict. c. 43), sec. 146 *et seq.*, and County Court Rules 1889, Ord. xxxv.

Property.—As to where the property consists of money or valuable securities, see note to "application," *sup.* A judgment in favour of a pauper is a valuable security within the meaning of sec. 16 of the Poor Law Amendment Act 1849.[2]

Appeals.

Persons aggrieved by refusal of an order may appeal to the sessions.

301. (1) Any person aggrieved by the refusal of an order by any justice or justices as to any matter within the jurisdiction of a justice or justices under this Part of this Act, may appeal to a court of quarter sessions upon giving to the justice or justices against whom the appeal is made fourteen clear days' notice of appeal.

[1] *Cleaver* v. *M'Kenna*, 1865, 35 L.J. P. M. & A. 91. The guardians, however, are ordinary, not preferential, creditors (*Laver* v. *Chesterfield Union*, 1894, 43 W.R. 25).

[2] *West Ham* v. *Owens*, 1872, L.R. 8 Ex. 37. Cleasby, B., said (at p. 39), "I am not sure that the verdict would not have been a 'valuable security,' though defeasible by reason of the leave given to set it aside."

Sec. 301 (2).

This subsection is based on the first clause of sec. 106 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

"Person."

Person includes persons, and any body corporate or incorporate (Interpretation Act 1889 (52 & 53 Vict. c. 63), secs. 1 and 19).

"Aggrieved."

Aggrieved.—The term "aggrieved" is not a technical expression,[1] and has to be interpreted with reference to the subject-matter. There must be damage or injury in a legal sense to constitute a grievance within the meaning of this subsection.

The refusal.—As to appeals against an order of adjudication, see sec. 303, *post*; and against other orders, see sec. 327, *post*.

Order . . . under this Part of this Act, i.e. under secs. 283-300, *ante*.

Justice.—Definition of, sec. 341, *post*.

Appeal.—As to notice of, see sec. 305, *post*; statutory grounds of, see sec. 306, *post*.

A court of quarter sessions.—Definition of "quarter sessions," see sec. 341, *post*. Under the corresponding clause in the Act of 1853 the appeal was to be to the next general or quarter sessions of the peace for the county or borough where the matter of appeal arose.[2]

Fourteen clear days.—The terminal days are excluded.[3]

Notice.—The notice should be served on the clerk to the justices.

(2) The determination of the court upon the appeal shall be final.

This subsection re-enacts part of the second clause of sec. 106 of the Lunatic Asylums Act 1853 (16 and 17 Vict. c. 97).

Party obtaining order of adjudication to send copy thereof and statement of grounds.

302. The guardians of any union, and the clerk of a local authority, obtaining any order under this Act adjudging the settlement of any lunatic to be in any union, shall, within a reasonable time after the date of the order, send or deliver, by post or otherwise, to the guardians of the union in which the lunatic is adjudged to be settled, a copy of the order, and also a statement in writing under the hand of the clerk to the guardians, or under the hand of the clerk of the local authority, as the

[1] Per Bramwell, L.J., in *Robinson* v. *Currey*, 1881, 7 Q.B.D., at p. 470; and see Stroud's *Judicial Dict.*, pp. 23-25, where the authorities are collected.

[2] See as to difficulty arising in consequence of this and similar provisions, *Colchester* v. *West Ham*, 1883, 47 J.P. 521; *Reg.* v. *Pixley*, 1843, 4 Q.B. 711; *Reg.* v. *West Riding of Yorkshire*, 1846, 10 J.P. 134.

[3] *Liffin* v. *Pitcher*, 1842, 1 Dowl., N.S., 767.

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case may be, stating the description and address of the guardians or clerk obtaining the order, and the place of confinement of the lunatic, and setting forth the grounds of the adjudication, including the particulars of any settlement relied upon in support thereof; and on the hearing of any appeal against the order the respondents shall not give evidence of any other grounds in support of the order than those set forth in such statement.

This section re-enacts sec. 107 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Guardians.—Definition of, sec. 341, *post.* The notice of appeal should, *semble*, be served on the clerk to the guardians.[1]

Union.—Definition of, sec. 341, *post.*

Clerk.—Definition of, sec. 341, *post* (in relation to local authority).

Local authority.—Definition of, sec. 240, *ante.*

Order . . . adjudging the settlement.—See sec. 289, *ante;* and as to amendment of, sec. 308, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Send . . . by post.—As to sending notices by post, see sec. 329, *post;* as to penalty for non-compliance with this requirement, see sec. 320, *post.*

"Reasonable time."

Reasonable time.—"Reasonable time" means reasonable having regard to the circumstances of the case, assuming of course that such circumstances were not due to any act or default by the party on whom the duty rested, etc.

A statement in writing.—As to sufficiency of and power to amend, see sec. 307, *post;* as to statement when justices have no clerk, see sec. 304, subs. (5), *post.*

Effect of improper signature of statement.

Under the hand.—The fact that the statement does not bear the proper signature, though a ground of appeal, does not make the order of adjudication a nullity.

The description.—A description would, *semble*, be sufficient if it was clear and ample enough for purposes of identification.[2] A defective description can be cured under sec. 307, *post.*[3]

Address.—The omission of this particular may be supplied under sec. 307, subs. (2), *post.*[4]

The particulars of any settlement.—As to inquiry into and adjudication of settlement, see secs. 289, 290, *ante.*

Any appeal.—As to appeals generally, see sec. 301, *ante;* and as to appeals against orders of adjudication, see sec. 303, *inf.*

[1] Cp. *Reg.* v. *Kent*, 1842, 6 J.P. 152.

[2] Cp. *Blount* v. *Harris*, 1878, 4 Q.B.D. 603.

[3] Cp. *Hick* v. *Rodocanahi*, 1891, 1 Q.B. 626, affirmed *sub nom. Hick* v. *Raymond and Reid*, 1893, 41 W.R. 385.

[4] *Reg.* v. *Manchester*, 1856, 6 E. & B. 919.

The respondents, i.e. the guardians, or the clerk of the local authority, making the adjudication, as the case may be. Sec. 303

Shall not give evidence.—As to objections to receipt of evidence, see sec. 307, *post.*

303. If the guardians of any union feel aggrieved by any order adjudging the settlement of a lunatic, they may appeal to the quarter sessions for the county or borough on behalf of which the order has been obtained, or in which the union obtaining the order is situate, or, in case such union extends into several counties, then to the next quarter sessions for the county or borough in which the institution for lunatics where the lunatic is or has been confined is situate, and such sessions, upon hearing the appeal, shall have full power finally to determine the matter. Appeal against order of adjudication.

This section re-enacts in substance sec. 108 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Guardians.—Definition of, sec. 341, *post.*

It was held in *Reg.* v. *Medway Union*[1] that although sec. 7 of 24 & 25 Vict. c. 55, gave the right of appeal against an order adjudging the settlement of a pauper lunatic to the guardians alone, the right of appeal conferred on the overseers by sec. 108 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97) was not taken away. The omission of the words "or the overseers" in the present section, which re-enacts sec. 108 of the Act of 1853, overrules the authority of this case. Right of appeal confined to guardians.

Union.—Definition of, sec. 341, *post.*

Feel aggrieved.—See note to "aggrieved" in sec. 301, *ante.* "Feel aggrieved."

Order . . . settlement.—See sec. 289, *ante.* As to appeals against refusal of order, see sec. 301, *ante;* and against other orders, see sec. 327, *post.*

Lunatic.—Definition of, sec. 341, *post.*

Appeal.—As to notice of appeal, see sec. 305, *post.* A notice of appeal erroneously given to borough sessions, and acted upon by the appellants by appearance at such sessions, cannot afterwards be treated as a valid notice of appeal to county sessions.[2] *Aliter*, however, where the notice is not acted upon, and steps are taken to rectify the error. In that case the words relating to the borough may be rejected as surplusage, and the notice treated as a notice of appeal to the county sessions.[3] Effect of notice of appeal erroneously given.

Quarter sessions.—Definition of, sec. 341, *post;* and see sec. 301,

[1] 1868, L.R. 3 Q.B. 383.
[2] *Reg.* v. *Salop*, 1854, 24 L.J. M.C. 14.
[3] S.C., and *Reg.* v. *Recorder of Liverpool*, 1850, 15 Q.B. 1070.

Sec. 304 (1).

Notice of appeal should specify sessions.

subs. (1), *ante*. *Semble*, that in view of the precise terms of this section as to the sessions to which an appeal is given, the notice should specify the sessions in point both of time and of place.

County.—Definition of, sec. 341, *post*.

Or borough.—These words did not appear in the corresponding provision in the Lunatic Asylums Act 1853, under which the appeal was to the county and not the borough quarter sessions.[1]

Counties. — The corresponding word in the Act of 1853 was "jurisdictions." It was held, however, in *Reg.* v. *Kent*[2] that jurisdictions meant counties. The object of this part of the section is to obviate the difficulty as to the sessions to which an appeal is to be taken, where a union extends into several counties, by making the question depend on the place in which the asylum is situated.

Institution for lunatics.—Definition of, sec. 341, *post*.

Hearing the appeal.—The appeal, even after it has been partly heard, may be adjourned to the next sessions. But this power is to be cautiously exercised.[3]

Copy of depositions to be furnished on application.

304. (1) The clerk to the justices making an order adjudging the settlement of a lunatic, or the clerk of the peace in the case hereinafter provided for, shall keep the depositions upon which the order was made, and shall, within seven days after application by any party authorised to appeal against the order, furnish a copy of the depositions to the applicant.

This subsection re-enacts the first part of the first clause of sec. 109 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Justices.—Definition of, sec. 341, *post*.

Order adjudging.—As to adjudication of settlement, see secs. 288, 289, *ante*.[4]

Lunatic.—Definition of, sec. 341, *post*.

The case hereinafter.—See subs. (5), *post*.

Shall keep.—As to penalty for default in compliance, see sec. 320, *post*.

Within seven days.—The day of the application is excluded.[5]

Any party authorised.—Any "person aggrieved" may appeal (see sec. 301, *ante*).

[1] *Reg.* v. *Warwickshire*, 1859, 28 L.J. M.C. 249.

[2] 1866, L.R. 1 Q.B., per Blackburn, J., at pp. 386, 387, and Lush, J., at p. 387.

[3] *Reg.* v. *Cambridge Union*, 1861, 30 L.J. M.C. 137.

[4] Before an appeal against an order of adjudication was given, such orders could be indirectly challenged by an appeal against the consequential order of maintenance, and the appellants were held entitled to a copy of the examinations (*Reg.* v. *Middlesex*, 1847, 11 J.P. 461 ; *ex parte Monkleigh Overseers*, 1848, 12 J.P. 134 ; *Reg.* v. *Tyrwhitt*, 1848, 12 J.P. 583).

[5] Cp. *Williams* v. *Burgess*, 1840, 12 A. & E. 635 ; *Robinson* v. *Waddington*, 1849, 18 L.J. Q.B. 250.

Furnish a copy.—See note to "shall keep," *sup.* As to evidence on prosecution, see sec. 329, *post.* Omission or delay in furnishing is not a ground of appeal (see subs. (3), *inf.*).

(2) The person applying for a copy of the depositions shall pay for the same at the rate of twopence for every folio of seventy-two words.

This subsection re-enacts the second part of the first clause of sec. 109 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

The person applying.—As to who may apply, see subs. (1), *sup.*

(3) No omission or delay in furnishing a copy of the depositions shall be a ground of appeal against the order.

This subsection re-enacts the first proviso to sec. 109 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

See notes to subs. (1), *sup.*

(4) On the trial of any appeal no such order shall be quashed or set aside either wholly or in part on the ground that the depositions do not furnish sufficient evidence to support, or that any matter therein contained or omitted raises an objection to the order or grounds on which the same was made.

This subsection re-enacts the second proviso to sec. 109 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Such order, i.e. an order adjudging the settlement (see subs. (1), *ante*).

Objection as to hearsay evidence inadmissible.

Sufficient evidence, e.g. an objection that the depositions show the order to have been made on hearsay evidence only is not admissible.[1] The quashing of a prior order of adjudication is generally conclusive between the parties, with this qualification, that if there be additional evidence of anything subsequent to the order, the estoppel is confined to the state of things existing at the time of the order.[2]

(5) If the justices who make any such order have no clerk, they shall send or deliver the depositions to the clerk of the peace of the county or borough to the quarter sessions whereof the appeal lies, and the party obtaining

[1] *Reg.* v. *St. Peter, Barton-on-Humber,* 1851, 17 Q.B. 630; and cp. *Reg.* v. *St. Mary, Islington,* 1852, 16 J.P. 760.

[2] *Heston* v. *St. Bride,* 1853, 1 E. & B. 583.

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such order shall, in the statement of the grounds of adjudication, state that the justices have no clerk.

This subsection re-enacts the third proviso to sec. 109 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Justices.—Definition of, sec. 341, *post.*

Any such order.—See note to subs. (4), *sup.*

Send.—As to sending documents by post, see sec. 329, *post.*

The clerk of the peace.—As to duty of in such case, see subs. (1), *ante.*

County.—Definition of, sec. 341, *post.*

Quarter sessions.—Definition of, sec. 341, *post.*

Whereof the appeal lies.—See sec. 301, *ante.*

The party obtaining.—See sec. 302, *ante.*

The statement, etc.—See sec. 302, *ante.*

No appeal if notice not given within a certain time.

305. No appeal shall be allowed against any such order if notice in writing of the appeal is not sent or delivered by post or otherwise to the party on whose application the order was obtained within twenty-one days after the sending or delivery, as hereinbefore directed, of a copy of the order, and such statement as hereinbefore mentioned, unless within the twenty-one days a copy of the depositions has been applied for by the party intending to appeal, in which case a further period of fourteen days after the sending of such copy shall be allowed for giving notice of appeal.

This section re-enacts sec. 110 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Abandonment of appeal through mistake in law.

No appeal.—If through the abandonment of an appeal owing to a mistake in law the time for appeal has expired, there is no remedy.[1]

Any such order, i.e. order adjudging settlement (see sec. 304, subs. (1), *ante*).

Notice should specify sessions.

Notice.—*Semble*, the notice should specify the sessions in point of place and of time to which the appeal is to be taken. This seems to follow from the terms of sec. 303, with reference to the sessions to which power of appeal is given.

Delivery on Sunday.

Sent or delivered.—Delivery on a Sunday is good service for the following Monday.[2]

The party on whose application.—See sec. 302, *ante.*

Twenty-one days.—The day on which the copy of the order or

[1] *Reg.* v. *Recorder of Liverpool*, 1852, 16 J.P. 324.

[2] *Ex parte Ashford*, 1852, 16 J.P. 759.

the deposition was sent or furnished is excluded. The last of the twenty-one days is included.[1] Sec. 306.

As hereinbefore directed.—See sec. 302, *ante.*

Fourteen days after.—See note to "twenty-one days," *sup.*

306. In every case where notice of appeal against such order is given the appellant shall, with the notice, or fourteen days at least before the first day of the sessions at which the appeal is to be tried, send or deliver by post or otherwise to the respondent a statement in writing under his hand, or where the appellants are the guardians of a union, under the hand of the clerk to the guardians, of the grounds of such appeal; and the appellant shall not, on the hearing of any appeal, give evidence of any other grounds of appeal than those set forth in such statement. Grounds of appeal to be stated.

This section re-enacts in substance sec. 111 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Notice of appeal.—See sec. 305, *ante.* The notice of appeal need not be signed. As the section provides that the grounds of appeal may be sent later than the notice, they are contemplated by the statute as separate documents.[2]

Such order, i.e. order adjudging settlement (see sec. 304, *ante*).

Fourteen days.—The first day of the sessions at which the appeal is to be tried is excluded.[3]

The sessions . . . tried.—See sec. 301, *ante.*

The respondent, i.e. the guardians (service on the clerk is sufficient), or the clerk to the local authority, as the case may be (see sec. 302, *ante*).

A statement in writing.—As to sufficiency and amendment of, see sec. 307, *inf.* As to statement in writing of grounds of adjudication, see sec. 302, *ante.* The statute contemplates that the notice of appeal and the statement should be separate documents. The statement must be signed by the appellant or the clerk of the guardians, and an omission on this point cannot be cured under sec. 307, *inf.*[4] Notice and statement should be separate documents.

[1] *Williams* v. *Burgess*, 1840, 12 A. & E. 635.

[2] *Shaftesbury Union* v. *Paddington Union*, 1880, 44 J.P. 684.

[3] *Reg.* v. *Shropshire*, 1853, 8 A. & E. 173.

[4] Cp. *Shaftesbury Union* v. *Paddington Union*, 44 J.P. 684; *Leominster Union* v. *Paddington Union*, 1880, *ib.* 685. In these cases an adjournment was allowed on payment by the appellants of the costs of the day, proper grounds of appeal to be duly signed (but not to include any new grounds) and to be delivered within ten days. As an instance of the strictness with which the provisions of this section have been construed, it may be mentioned that on the adjourned hearing of these appeals (1881, 45 J.P. 80), which were brought under the Lunatic Asylums Act 1853, they were dismissed on the ground that the three guardians (whose signature to the statement was required by sec. 111 of that statute) Effect of omission of proper signature.

Sec. 307 (1), (2).

Or where the appellants.—This clause did not appear in the corresponding provision in the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 67).

Shall not give evidence.—As to objections to the reception of evidence, see sec. 307, *inf.*

As to the sufficiency of statement of grounds of adjudication or appeal.

307. (1) Upon the hearing of any appeal against any such order no objection whatever on account of any defect in the form of setting forth any ground of adjudication or appeal in any such statement shall be allowed, and no objection to the reception of legal evidence offered in support of any such ground alleged to be set forth in any such statement shall prevail, unless the Court is of opinion that such alleged ground is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial.

This subsection re-enacts the first clause of sec. 112 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Any such order, i.e. order adjudging the settlement (see sec. 304, *ante*).

Any defect in the form.—A defect in the statement of the description or address of the guardians may,[1] but apparently a defect in the signature cannot,[2] be amended under this subsection.

Any ground of adjudication.—See sec. 302, *ante.*

Or appeal.—See sec. 306, *sup.*

Legal evidence.—See note to sec. 304, subs. (4), *ante.*

Unless the Court.—The decision of the Court is final (see sec. 310, *post;* and see sec. 301, subs. (2), *ante*).

As to power of amendment, see subs. (1), *sup.*

As to the Court, see sec. 301, subs. (1), *ante.*

(2) In all cases where the Court is of opinion that any such objection to such statement or to the reception of

were not all present at the meeting at which the minute authorising the appeal was drawn up. In the one case the absence of some of the guardians was admitted; in the latter no evidence was offered either way. But the Court refused to presume that there had been no irregularity. In *New Forest Guardians* v. *Gower Union*, 1885, 49 J.P. 248, it was held at quarter sessions that signature by the guardians at a board meeting was unnecessary; and cp. *Norwich Guardians* v. *Cambridge Union*, (1863, 27 J.P. 70, 28 J.P. 7), where a corporation were made guardians of the poor under a local Act; *Ringwood Union* v. *Lymington Union*, 1882, 46 J.P. 488; *Tewkesbury Union* v. *Stafford Union*, 1882, *ib.*

[1] *Reg.* v. *Manchester*, 1856, 6 E. & B. 919.

[2] See note to "statement in writing," in sec. 306, *sup.*

Sec. 308 (1), (2).

evidence ought to prevail, the Court may, if it thinks fit, cause any such statement to be forthwith amended by some officer of the Court, or otherwise, on such terms as to payment of costs to the other party, or postponing the trial to another day in the same sessions, or to the next subsequent sessions, or both payment of costs and postponement as to the Court appears just.

This subsection re-enacts the proviso to sec. 112 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

The Court.—See sec. 301, subs. (1), and notes, *ante.*

Any such objection.—See subs. (1), *sup.*

The reception of evidence.—See subs. (1), *sup.*

To be amended.—The decision of the Court on the question of amendment is final (sec. 310, *post*; and see subs. (2), *sup.*, and sec. 302, *ante*).

Power for Court to amend order on account of omission or mistake.

308. (1) If, upon the trial of any appeal against any such order, or upon the return to a writ of certiorari, any objection is made on account of any omission or mistake in drawing up the order, and it is shown to the satisfaction of the Court that sufficient grounds were proved before the justices making the order to authorise the drawing up thereof free from the omission or mistake, the Court may, upon such terms as to payment of costs as it thinks fit, amend the order and give judgment as if no omission or mistake had existed.

This subsection re-enacts the first clause of sec. 113 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Any such order, i.e. order of adjudication (see sec. 304, *ante*).

Return to a writ of certiorari.—See subs. (2), *inf.*

The Court.—See sec. 301, subs. (1), *ante*, as to.

Decision of Court final.

Amend the order.—The decision of the Court on this point is final (sec. 310, *post*; and see sec. 301, subs. (2), *ante*). The Court cannot make such an amendment as will affect parties who were not before the justices, and are not before the Court on the appeal.[1]

(2) No objection on account of any omission or mistake in any such order brought up upon a return to a writ of

[1] *Reg.* v. *Liverpool*, 1860, 29 L.J. M.C. 137.

Sec. 309 (1), (2).

certiorari shall be allowed, unless the omission or mistake has been specified in the rule for issuing such writ of certiorari.

This subsection re-enacts the proviso to sec. 113 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Power of Court as to costs.

309. (1) Upon every such appeal the Court before whom the same is brought may, if it thinks fit, order the party against whom the same is decided to pay to the other such costs and charges as may to the Court appear just, and shall certify the amount thereof.

This subsection re-enacts sec. 115 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Such appeal, *i.e.* an appeal against either the refusal of any order (sec. 301, *ante*), or an order of adjudication (sec. 302, *ante*).

The Court.—See sec. 301, subs. (1), and sec. 303, *ante*.

What sessions competent to make order.

Before whom.—The sessions at which the appeal is heard and determined alone have jurisdiction to grant costs, and an order for costs by any subsequent sessions is invalid.[1]

Order can only be made where appeal decided.

Decided.—It would seem that an order for costs cannot be made where no appeal is entered, although notice of appeal has been given and not countermanded.

Such costs.—See subs. (2), *inf.*

(2) If either of the parties to the appeal have included in the statement of grounds of adjudication or of appeal sent to the opposite party any grounds in support of the order or of appeal which, in the opinion of the Court determining the appeal, are frivolous and vexatious, such party shall be liable, at the discretion of the Court, to pay the whole or any part of the costs incurred by the other party in disputing any such grounds.

This subsection re-enacts sec. 114 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

The statement . . . adjudication.—See sec. 302, *ante*.

Or of appeal.—See sec. 306, *ante*.

The Court.—See note to subs. (1).

[1] *Reg.* v. *Staffordshire*, 1857, 26 L.J. M.C. 179.

Frivolous and vexatious.—As to the meaning of these words, see notes to sec. 330, subs. (2), *post.* Sec. 310.

Incurred, i.e. not improperly incurred.[1]

Decision upon appeal to be final.

310. The decision of the Court upon the hearing of any appeal against any such order, as well upon the sufficiency and effect of the statement of the grounds in support of the order and appeal, and of the copy or duplicate of the order sent to the appellant, as upon the amending or refusing to amend the order as aforesaid, or the statement of grounds, shall be final, and shall not be liable to be reviewed in any Court by means of a writ of certiorari or mandamus or otherwise.

This section re-enacts sec. 116 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

The Court.—See sec. 301, subs. (1), and sec. 303, *ante.*

Any appeal.—The decision of the Court in an appeal under sec. 301, subs. (1), *ante*, is (subs. (2), *ante*), and in an appeal by guardians against an order of adjudication may be (sec. 303, *ante*), final. This section relates only to (1) the sufficiency and effect of the statement of the grounds in support of the order and appeal, and of the copy or duplicate of the order sent to the appellant; and (2) the amendment of, or refusal to amend, the order or statement. Scope of section.

The sufficiency . . . appeal.—See secs. 302, 306, 307, *ante.*

The copy.—See sec. 302, *ante.*

The amending.—As to amendment of order, see sec. 308, subs. (1), *ante;* of statement of grounds, see sec. 307, subs. (2), *ante.* As to costs of frivolous or vexatious statements, see sec. 309, subs. (2), *sup.*

Abandonment of orders.

311. (1) In any case in which an order has been made as aforesaid, and a copy thereof sent as herein required, the party who has obtained the order, whether any notice of appeal against the order has been given or not, and whether any appeal has been entered or not, may abandon the order, by notice in writing under the hand of such party, or, where the order has been obtained by the guardians of a union, under the hand of the clerk to the guardians, to be sent by post or delivered to the appellant

[1] Cp. *re Beddoe*, 1893, 41 W.R., at p. 179.

Sec. 311 (1)-(3).

or the party entitled to appeal, and thereupon the order and all proceedings consequent thereon shall be void, and shall not be given in evidence, in case any other order for the same purposes is obtained.

This subsection re-enacts in substance the first clause of sec. 117 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

An order has been made.—See sec. 302, *ante*,—*i.e.* an order adjudging the settlement.

A copy thereof.—See sec. 302, *ante*.

Notice of appeal.—As to, see sec. 305, *ante*.

The clerk.—Under the corresponding provision in the Act of 1853 the notice was required to be under the hands of three or more of the guardians.

Guardians.—Definition of, sec. 341, *post*.

Shall not be given in evidence.—*Semble*, however, that use might be made of such documents in subsequent proceedings for purposes of examination or cross-examination.[1]

(2) In all cases of such abandonment the party abandoning shall pay to the appellant or the party entitled to appeal the costs which he has incurred by reason of the order and all subsequent proceedings thereon.

This subsection re-enacts the second clause of sec. 117 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

The costs.—See further as to costs, sec. 309, *ante*.

Incurred, i.e. not improperly incurred.[2]

(3) The proper officer of the Court before whom the appeal (if it had not been abandoned) might have been brought shall, upon application, tax and ascertain the costs, at any time, whether the Court is sitting or not, upon production to him of the notice of abandonment, and upon proof to him that such reasonable notice of taxation, together with a copy of the bill of costs, has been given to the guardians, or clerk abandoning the order, as the distance between the parties shall in his judgment require; and thereupon the

[1] Cp. *Birchall* v. *Bullough*, 1896, 1 Q.B. 325. If notice of abandonment is given, the appeal cannot be proceeded with, though it has been respited on terms at a previous session (*Killymaenllwydd* v. *St. Michael's, Pembroke*, 1852, 21 L.J., N.S., M.C. 79).

[2] Cp. *re Beddoe*, 1893, 41 W.R., at p. 179.

sum allowed for costs, including the usual costs of taxation, which such officer is hereby empowered to charge and receive, shall be endorsed upon the said notice of abandonment, and the said notice so endorsed shall be filed among the records of the said Court. Sec. 312.

This subsection re-enacts the last clause of sec. 117 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

The Court before whom.—See sec. 301, subs. (1), and sec. 303, *ante*.

Tax.—As to taxation, see Macmorran and Lushington's Poor Law Orders, p. 16.

The costs.—See subs. (2), *sup.* As to payment of, see sec. 314, subs. (2), *post*.

Notice of abandonment.—See subs. (1), *sup.*

Reasonable.—See note to "reasonable time" in sec. 302, *ante*.

Clerk.—For definition of in relation to local authority, see sec. 341, *post*.

Guardians and officers interested to have access to the lunatic.

312. In every case of an inquiry, or appeal as to the union in which a pauper lunatic is settled, the guardians, clerks of the guardians, and relieving officers of every union interested in the inquiry or appeal, and every person duly authorised by them respectively, and the clerk of the local authority interested in the inquiry or appeal, and every person duly authorised by him, shall at all reasonable times be allowed free access, in the presence of the medical attendant, to the lunatic to examine him as to the premises.

This section re-enacts sec. 119 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Inquiry, i.e. as to settlement (see sec. 288, *ante*).

Appeal.—See secs. 302, 303, *ante*.

Union.—Definition of, sec. 341, *post*.

Pauper.—Definition of, sec. 341, *post*.

Lunatic.—Definition of, sec. 341, *post*.

Settled.—As to settlement of, see *ante*, p. 638.

Guardian.—Definition of, sec. 341, *post*.

Clerk.—Definition of, sec. 341, *post* (in relation to local authority).

Local authority.—Definition of, sec. 240, *ante*.

Free access.—As to visitation of lunatics chargeable to a union, see sec. 201, *ante*.

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Sec. 31 of 42 & 43 Vict. c. 49, not to apply.

313. The provisions of section thirty-one of the Summary Jurisdiction Act 1879 shall not apply to appeals under this part of this Act.

This section is merely declaratory of the previously existing law (see sec. 54 of the Summary Jurisdiction Act 1879 (42 & 43 Vict. c. 49), and sec. 35 of the Summary Jurisdiction Act 1848 (11 & 12 Vict. c. 43)). Sec. 31 of the Summary Jurisdiction Act 1879 (42 & 43 Vict. c. 49) deals with procedure on appeals from courts of summary jurisdiction to courts of general or quarter sessions.

Recovery of Expenses.

Money ordered to be paid may be recovered by distress or action.

314. (1) If the treasurer of any local authority, upon whom any order of justices for the payment of money under the provisions of this Act is made, refuses or neglects for twenty days after due notice of such order to pay the money, the money, together with the expenses of recovering the same, shall be recovered by distress and sale of the goods of the treasurer so refusing or neglecting, by warrant under the hands of any two justices authorised to make the order for payment of the money, or by an action at law, or by any other proceeding in a court of competent jurisdiction, against the treasurer.

This section is based on the first clause of sec. 121 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), and sec. 15 of the Lunacy Act 1855 (18 & 19 Vict. c. 105), as modified by the Local Government Act 1888 (51 & 52 Vict. c. 41).

Local authority.—Definition of, sec. 240, *ante*.

For twenty-one days after.—The day of the notice is excluded.[1]

Due.—See note to "reasonable time" in sec. 302, *post*.

"Notice."

Notice.—Notice is a direct and definite statement of a thing, as distinguished from supplying materials from which its existence may be inferred.[2]

(2) If the guardians upon whom any such order is made refuse or neglect for such time as aforesaid to pay the money, the same, together with the expenses of re-

[1] *Blunt* v. *Heslop*, 1838, 7 L.J. Q.B., N.S., 216; *Weekes* v. *Wray*, 1868, 16 W.R. 399.

[2] Cp. *Burgh* v. *Legge*, 1839, 5 M. & W. 420; and see *Vallée* v. *Dumergue*, 1849, 18 L.J. Ex. 398.

covering the same, may be recovered by an action at law or by any other proceeding in any such Court.

Sec. 314 (2), (3).

This subsection re-enacts the second clause of sec. 121 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Guardians.—Definition of, sec. 341, *post.*

For such time as aforesaid.—See subs. (1), *sup.*

An action . . . Court.—Debts, claims, or demands due by guardians are to be paid within the half-year in which the same shall have been incurred or become due, or within three months after the expiration of such half-year, but not afterwards, the commencement of such half-year to be reckoned from the time when the last half-year's account shall or ought to have been closed[1] according to the order of the Poor Law Commissioners or Poor Law Board: Provided that the Local Government Board by their order may, if they see fit, extend the time within which such payment shall be made, for a period not exceeding twelve months after the date of such debt, claim, or demand (cp. 22 & 23 Vict. c. 49, sec. 1).

If proceedings are commenced in time, and prosecuted with due diligence,[2] judgment may be recovered though pronounced after the expiration of the time limited; and this provision applies to proceedings for the enforcement of such judgment by mandamus or otherwise (*ib.* sec. 4). The guardians are not required to pay the bill of costs of any solicitor retained by them in such proceedings till the final determination of the suit or his retainer. Such bill is payable within a year after such determination, or within any extension of time not exceeding six months authorised by the Local Government Board. A solicitor taking proceedings in time has the same right as any other creditor under sec. 4, *sup.* The guardians may make payment to account at any time (sec. 5).

(3) In case of any such action or proceeding no objection shall be taken to any default or want of form in any order for reception or maintenance, or in any certificate or adjudication under this Act, if such order or adjudication has not been appealed against, or if appealed against has been affirmed.

This subsection re-enacts the last clause of sec. 121 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

No objection shall be taken.—As to objections on appeals, see secs. 307 and 308, *ante.*

Not been appealed against.—See sec. 303, *ante.*

[1] As to, see Macmorran and Lushington's Poor Law Orders, p. 424.

[2] What is due diligence in this case is a question of fact (see note to "reasonable time" in sec. 302, *ante*), and *Rhodes* v. *Pateley Bridge Union*, 1884, 51 L.T., N.S., 235.

Sec. 315 (1).

Part XI.

PENALTIES, MISDEMEANOURS, AND PROCEEDINGS.

Lunatics not to be detained except in accordance with Act.

315. (1) Every person who, except under the provisions of this Act, receives or detains a lunatic, or alleged lunatic, in an institution for lunatics, or for payment takes charge of, receives to board or lodge, or detains a lunatic or alleged lunatic in an unlicensed house, shall be guilty of a misdemeanour, and in the latter case shall also be liable to a penalty not exceeding fifty pounds.

This subsection is based on sec. 90 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), secs. 4 and 5 of the Lunacy Act 1853 (16 & 17 Vict. c. 96), secs. 73 and 74 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), and sec. 35 and sec. 85, subs. (3) of the Lunacy Act 1889.

Except under the provisions of this Act.—As to the reception of lunatics in institutions for lunatics or as single patients, see secs. 4, 5, 11, 13-22, 23, *ante*.

The words under consideration are wide enough to cover the committee of the person of a lunatic so found.

Receives or detains.—Failure on the part of the defendant to send copies of the reception order and certificates to the Commissioners (proved by absence of any entries as to such order or certificates in the Commissioners' books), or to produce them at the trial on notice, is evidence to go to the jury that the lunatic was not received and detained "under the provisions of this Act."[1] The restraint of a lunatic is justifiable at common law, independent of statute, if necessary for his welfare or that of others.[2]

Meaning of term "lunatic" in this section.

Lunatic.—Definition of, sec. 341, *post*. It is not necessary to a conviction under this subsection that there should be evidence of frenzy or delusion.[3] The term "lunatic" includes for this purpose every person whose mind is so affected by disease that it is necessary for his own good to put him under restraint, and an honest but mistaken belief reasonably entertained by the defendant that any person so received is not a lunatic is immaterial.[4]

Honesty of belief immaterial.

"Receive or detain."

Reg. v. *Sherrard.*

The words "receive or detain a lunatic" mean receive or detain as a lunatic, and in order to be subjected to treatment *ejusdem generis* with that applied to lunatics in asylums.[4] In *Reg.* v. *Sherrard*[4] the

[1] *Reg.* v. *Harris*, 1867, 10 Cox C.C. 541.

[2] Cp. *re Shuttleworth*, 1846, 10 J.P., at p. 761, per Erle, J., and see *ante* p. 86.

[3] *Reg.* v. *Shaw*, 1868, L.R., 1 C.C.R. 145.

[4] *Reg.* v *Bishop*, 1880, 5 Q.B.D. 259; and cp. *Reg.* v *Sherrard*, 1894, *Times*, March 10, 12, 13, 14, an indictment against a medical man under this section removed from Eastbourne to the Central Criminal Court under Palmer's Act (19 & 20 Vict. c. 16).

Sec. 315 (2), (3)

fact that the patients were allowed to go out without control was relied on as evidence that they were not received as lunatics. But this mode of treatment is constantly adopted in asylums, and sec. 21 of the Lunacy Act 1891, *ante*, provides for its prevention where objected to by neighbouring residents. A further argument relied on in the same case, viz. that the construction put on the statute in *Reg.* v. *Bishop*[1] would render a landlady liable for the reception of a lunatic lodger, is deprived of all practical point by the precautions in sec. 325, subs. (2), *post*, against private proceedings.

Institution for lunatics.—Definition of, sec. 341, *post.*

For payment.—In sec. 90 of the Lunacy Act 1845 (8 & 9 Vict. c. 100) the words were "for profit." These words, however, enabled a defendant to contend,[2] if the payments that he received for a patient were small, that he did not receive or detain him "for profit." The use of the term "payment" renders this plea inadmissible.

Terms "for payment" why used.

Unlicensed house.—As to licensed houses, see sec. 208, *ante.*

Misdemeanour.—As to punishment for, where, as in the case of unauthorised reception into and detention in an institution for lunatics, no penalty is prescribed, see note to sec. 7, subs. (4), *ante.* As to prosecutions, see secs. 325-28, *post.*

Penalty.—As to recovery of, see sec. 326, *post.*

(2) Except under the provisions of this Act, it shall not be lawful for any person to receive or detain two or more lunatics in any house unless the house is an institution for lunatics or workhouse.

This subsection re-enacts in substance the first clause of sec. 44 of the Lunacy Act 1845 (8 & 9 Vict. c. 100). See notes to subs. (1), *sup.*

Except under, etc.—See sec. 46, *ante.*

It shall not be lawful.—Contravention of this provision is a misdemeanour (subs. (3), *inf.*). See subs. (1), *sup.*, as to punishment for.

Workhouse.—This is new. See definition of, sec. 341, *post.*

(3) Any person who receives or detains two or more lunatics in any house, except as aforesaid, shall be guilty of a misdemeanour.

This subsection re-enacts the second clause of sec. 44 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

See notes to subs. (2).

Receives or detains.—The fact that no profit was obtained,[3] or that

Fact that no profit obtained and honest belief no defence.

[1] 1880, 5 Q.B.D. 259.

[2] Cp. *Vollan's case*, 1872, 28th Report of Commissioners in Lunacy, p. 73. In this case, Bovill, C.J., left to the jury the question of profit or no profit, and the defendant was acquitted.

[3] *Budd* v. *Mary Foulks*, 1813, 3 Camp. 404.

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the defendant honestly believed the persons so received not to be lunatics (if they are of unsound mind[1]) is no defence.

Neglect to send notices on admission a misdemeanour.

316. The manager of any hospital or licensed house, and any person having charge of a single patient who omits to send to the Commissioners the prescribed documents and information upon the admission of a patient, or to make the prescribed entries, and give the prescribed notices upon the removal, discharge, or death of a patient, shall be guilty of a misdemeanour, and in the case of a single patient shall also be liable to a penalty not exceeding fifty pounds.

This section is based on the last clauses of secs. 52, 54, and 90 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), sec. 21 of the Lunacy Act 1853 (16 & 17 Vict. c. 96), and sec. 85, subs. (3) of the Lunacy Act 1889.

The manager.—Definition of, sec. 341, *post.*

Hospital.—Definition of, sec. 341, *post.*

Licensed house.—As to, see sec. 208, *ante.*

Single patient.—As to reception of, see secs. 4 and 5, *ante.*

Omits.—Whether the omission is wilful or not.[2]

The Commissioners.—See sec. 150, *ante*, as to; and sec. 341, *post*, for definition of.

Prescribed.—Definition of, sec. 341, *post.*

Documents . . . patient.—See Commissioners' Rules 1895, r. 7, *post.*

Entries . . . notices.—See Commissioners' Rules 1895, rr. 22, 23, 24, *post.*

Misdemeanour.—As to punishment of, see note to sec. 7, subs. (4), *ante*; as to prosecutions, see secs. 325, 328, 329, *post.*

Penalty.—As to recovery of penalties, see sec. 326, *post.*

Misstatements. (Act of 1889, s. 23, subs. (1).)

317. (1) Any person who makes a wilful misstatement of any material fact in any petition, statement of particulars, or reception order under this Act, shall be guilty of a misdemeanour.

This subsection re-enacts sec. 23, subs. (1) of the Lunacy Act 1889.

Petition.—See sec. 5, *ante.*

[1] *Reg.* v. *Bishop*, 1880, 5 Q.B.D. 259.

[2] See in the 42nd Report of the Commissioners in Lunacy, at p. 94, a case where a fine was imposed on the clerk of a union for failure to forward the statutory quarterly lists of pauper lunatics (*Bedford's case*, 1887).

Sec. 317 (1)-(3).

Statement of particulars.—See sec. 5, *ante*. As to construction of, see *Lowe* v. *Fox*, *ante* p. 91.

Reception order.—See secs. 4, 5, 11, 13-22, 23, *ante*; and definition of, sec. 341, *post*. As to protection of persons putting Act in force, see sec. 330, *post*.

Misdemeanour.—As to prosecutions, see secs. 325 and 328, *post*; as to punishment, see note to sec. 7, subs. (4), *ante*.

(2) Any person who makes a wilful misstatement of any material fact in any medical or other certificate, or in any statement or report of bodily or mental condition under this Act, shall be guilty of a misdemeanour. (Act of 1889, s. 23, subs. (2).)

This subsection re-enacts sec. 23, subs. (2) of the Lunacy Act 1889. See notes to subs. (1).

Medical.—As to medical certificates, see sec. 4, subs. (2), and sec. 28, *ante*.

Statement . . . condition.—See sec. 39, subs. (1), *ante*.

(3) A prosecution for a misdemeanour under this section shall not take place except by order of the Commissioners, or by the direction of the Attorney-General or the Director of Public Prosecutions. (Act of 1889, s. 23, subs. (3).)

This subsection re-enacts sec. 23, subs. (3) of the Lunacy Act 1889.

The Commissioners.—See sec. 150, *ante*; and sec. 341, *post*, for definition of.

Director of Public Prosecutions.—The Solicitor to the Treasury for the time being is Director of Public Prosecutions, and the Assistant Solicitor may act in that capacity (Prosecution of Offences Act 1884 (47 & 48 Vict. c. 58), sec. 2).

False entries.

318. Any person who in any book, statement, or return, knowingly makes any false entry as to any matter as to which he is by this Act or any rules made under this Act required to make any entry, shall be guilty of a misdemeanour.

This section is based on secs. 50, 54, 59, and 90 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Any rules . . . Act.—See Commissioners' Rules 1895, *post*, and sec. 338, subs. (1), *post*.

Misdemeanour.—As to prosecutions, see secs. 325, 328, *post*. As

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to punishment of, see note to sec. 7, subs. (4), *ante*. As to protection of persons putting Act in force, see sec. 330, *post*.

A form of indictment against a physician under this section will be found in 5 Cox C.C. Appx. x.

Notice to coroner of death.

319. If the manager of an institution for lunatics, or the person having charge of a single patient, omits to send to the coroner notice of the death of a lunatic within the prescribed time, he shall be guilty of a misdemeanour.

This section re-enacts the last clause of sec. 44 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111).

Manager.—Definition of, sec. 341, *post*.

Institution for lunatics.—Definition of, sec. 341, *post*.

Single patient.—As to reception of, see secs. 4, 5, *ante*.

Omits.—Whether wilfully or not.

To send.—As to evidence of sending, on prosecution, see sec. 329.

Notice.—See Commissioners' Rules 1895, r. 27, *post*. As to inquests, see sec. 84, *ante*.

Lunatic.—Definition of, sec. 341.

Misdemeanour.—See note to sec. 318, *sup*. As to punishment of, see note to sec. 7, subs. (4), *ante*.

Penalty for non-compliance with the Act and rules. (Act of 1889, s. 85, subs. (1).)

320. Any person who makes default in sending to the Commissioners or any other person any return, report, extract, copy, statement, notice, plan, or document, or any information within his knowledge or obtainable by him, when required so to do under this Act or any other Act relating to lunacy, or any rules made under this Act or in complying with the said Acts or rules, shall for each day or part of a day during which the default continues be liable to a penalty not exceeding ten pounds, unless a penalty is expressly imposed by this or any other Act for such default: Provided that all or any part of the cumulative penalties may be remitted by the Court in any case in which it is made to appear to the satisfaction of the Court that the original default or its continuance during any period of time arose from mere accident or oversight, and not from wilful or culpable neglect on the part of the person sued.

Sec. 321 (1), (2).

This section re-enacts sec. 85, subs. (1) of the Lunacy Act 1889.

Default.—Whether wilful or not, inadvertence is merely a ground for discretionary remission of penalties.

Sending.—As to evidence on prosecution, see sec. 329, *post*.

The Commissioners.—See sec. 150, *ante*, as to; and for definition of, sec. 341, *post*.

Rules . . . Act.—See Commissioners' Rules 1895, *post*, and sec. 338, subs. (1), *post*.

Penalty.—As to proceedings for recovery of, see sec. 325, *post*.

"Wilful 'neglect."

Wilful . . . neglect.—Wilfully to neglect anything is intentionally and purposely to omit to do it.[1]

Obstruction. (Act of 1889, s. 85, subs. (2).)

321. (1) Any person who obstructs any Commissioner or Chancery or other visitor in the exercise of the powers conferred by this or any other Act, shall for each offence be liable to a penalty not exceeding fifty pounds, and shall also be guilty of a misdemeanour.

This subsection re-enacts in substance sec. 85, subs. (2) of the Lunacy Act 1889.

Obstructs.—A case of obstruction—*Reg.* v. *Urry*—is noted in the 40th Report of the Commissioners in Lunacy, 1886, p. 74. In subs. (2), *inf.*, *wilful* obstruction only is penalised, although bare obstruction is a misdemeanour. Sec. 330, *post*, would be open to any one prosecuted under this subsection, who could satisfy its conditions.

Commissioner.—Definition of, sec. 341, *post*.

Or Chancery.—These words are new.

Or other visitor.—The case of special visitors under the order of the Lord Chancellor, or a Secretary of State, or of the Commissioners in Lunacy, is dealt with in subs. (2), *inf.* Visiting committees (*ante* pp. 491 *et seq.*) are primarily pointed to by the words "or other visitor."

"Any other Act."

Any other Act.—See sec. 2 (iv.) of the Lunacy (Vacating of Seats) Act 1886 (49 Vict. c. 16), *post*; sec. 12 of the Idiots Act 1886 (49 & 50 Vict. c. 25), *post*; the Criminal Lunatic Asylums Act 1860 (23 & 24 Vict. c. 75), secs. 14 and 15, *post*; and the Criminal Lunatics Act 1884 (47 and 48 Vict. c. 64), sec. 2.

Penalty.—As to proceedings for recovery of, see sec. 326, *post*.

Misdemeanour.—As to punishment of, see note to sec. 7, subs. (4), *ante*.

As to prosecutions for, see secs. 325 and 328, *post*.

(2) Any person who wilfully obstructs any other person authorised under this Act by an order in writing

[1] Cp. *R.* v. *Downes*, 1875, 1 Q.B.D. 25. See a curious case held to be "wilful neglect" within sec. 322, in the notes to that section, *post*.

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under the hand of the Lord Chancellor or a Secretary of State to visit and examine any lunatic or supposed lunatic, or to inspect or inquire into the state of any institution for lunatics, gaol, or place wherein any lunatic or person represented to be lunatic is confined or alleged to be confined, in the execution of such order, and any person who wilfully obstructs any person authorised under this Act by any order of the Commissioners to make any visit and examination or inquiry in the execution of such order, shall (without prejudice to any proceedings, and in addition to any punishment to which such person obstructing the execution of such order would otherwise be subject), be liable for every such offence to a penalty not exceeding twenty pounds.

This subsection re-enacts sec. 34 of the Lunacy Act 1853 (16 & 17 Vict. c. 96).

Term "wilfully," why used.

Wilfully obstructs.—Perhaps the word "wilfully" is used so as to exempt from punishment any honest and *bonâ fide* mistake as to the authority of the visitor. Such mistakes are of course more likely to occur in the case of special visitors than in that of Commissioners, Chancery Visitors, or visiting committees, the bare obstruction of whom is a misdemeanour (see subs. (1), *sup.*).

Any other person.—As to obstruction of Commissioners, etc., see subs. (1), *sup.*

An order . . . Secretary of State.—As to such orders, see sec. 205, *ante.*

See definitions of Lord Chancellor and Secretary of State, cited *ante* pp. 169, 198.

Lunatic.—Definition of, sec. 341, *post.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Query whether visitor can take independent proceedings.

Without prejudice . . . be subject.—Possibly this clause points to independent civil and criminal proceedings by the obstructed visitor, *e.g.* for assault.

A penalty.—As to proceedings for recovery of penalties, see sec. 326, *post.*

Ill-treatment.

322. If any manager, officer, nurse, attendant, servant, or other person employed in an institution for lunatics, or any person having charge of a lunatic, whether by reason of any contract, or of any tie of relationship, or marriage,

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or otherwise, ill-treats or wilfully neglects a patient, he shall be guilty of a misdemeanour, and, on conviction on indictment, shall be liable to fine or imprisonment, or to both fine and imprisonment at the discretion of the Court, or be liable on summary conviction for every offence to a penalty not exceeding twenty pounds nor less than two pounds.

This section is based on sec. 56 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), sec. 9 of the Lunacy Act 1853 (16 & 17 Vict. c. 96), and sec. 123 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Manager.—See definition of, sec. 341, *post.*

Officer.—As to scope of term "officer," see note to sec. 280, subs. (1), *ante.*

Institution for lunatics.—Definition of, sec. 341, *post.*

As to ill-treatment of criminal lunatics, see sec. 13 of the Criminal Lunatics Asylum Act 1860 (23 & 24 Vict. c. 75). Definition of "lunatic," sec. 341, *post.*

Any person . . . or otherwise.—These words get rid of a difficulty which arose in the construction of sec. 9 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 96), in which the corresponding provision was "any person detaining or taking or having the care or charge, or concerned or taking part in the custody, care, or treatment of any lunatic." Origin of clause.

It was held in *Reg.* v. *Rundle*[1] that a husband who ill-treated his wife did not come within the purview of this provision, on the ground "that the Legislature never intended to interfere with a care and charge which is purely of a domestic nature, and arises from the relation of husband and wife or other similar relation." In *Reg.* v. *Porter*[2] a distinction was established between one who voluntarily undertakes the charge of a lunatic and one who is by law compelled to maintain the lunatic, the former being, and the latter not being, liable under the statute. In this case, which constituted, it will be observed, a distinct departure from the principle of domestic custody, it was held that a person who took care of a lunatic brother, whom he was under no legal obligation to support, could be convicted under the corresponding provision in the Act of 1853.[3] In *Buchanan* v. *Hardy*[4]—a case in which justices found that a lunatic was ill-treated by her parents, with whom she resided—an attempt was made to sustain the authority of *Reg.* v. *Rundle*[5] at the diminished level

Reg. v. *Rundle.*

Reg. v. *Porter.*

Buchanan v. *Hardy.*

[1] 1855, 1 Dears. 482; and cp. *Slater's case*, 1878, 33rd Annual Report Commissioners in Lunacy, p. 123. In *Hastings' case*, 1878, *ib.* 122, the point was taken that the putative father of an imbecile lad could not be convicted of ill-treating him inasmuch as, no order having been made under the Bastardy Act, he had not the lad's care or control. But the objection was overruled.

[2] 1864, 33 L.J., N.S., M.C. 126.

[3] See note 2 *sup.*, and cp. *Reg.* v. *F. Smith*, 1880, 14 Cox C.C. 398.

[4] 1887, 18 Q.B.D. 486.

[5] *Sup.*, note 1.

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where *Reg.* v. *Porter*[1] had left it. It was contended that, as parents are bound to maintain their children, they did not come within the statute. But the Court overruled the objection, and Lord Coleridge —in whose judgment Mathew, Cave, and A. L. Smith, JJ., concurred —said that "if any person has the care or charge or custody of a lunatic, and in the course of that custody he in any way abuses, ill-treats, or wilfully neglects that lunatic, then whether the custody be or be not what has been called domestic custody, the person so ill-treating," etc., the lunatic comes within 16 & 17 Vict. c. 96, sec. 9, "and is liable to the provisions of that section."[2]

The clause under examination embodies the general principle laid down in *Buchanan* v. *Hardy*.

Risk of ill-treatment. Observations of Dillwyn Committee on.

Ill-treats.—The Dillwyn Committee, 1878, observe[3] that "the risk of maltreatment by attendants requires constant watching. When it is considered from what class attendants are necessarily taken, how difficult it must be for them to keep their temper under the provoking habits of the unfortunate patients which have made them insupportable to their nearest relations, and how cautiously any statements of lunatics themselves about their own treatment must be received, it will appear that the utmost vigilance must be exercised to prevent serious abuses of this nature." It should be noted, however, that in certain forms of insanity, *e.g.* in senile dementia, the bones of lunatics are peculiarly brittle, and liable to sustain fractures or injury without any undue violence having been applied to them.

Ill-treatment of lunatic common law misdemeanour.

The ill-treatment of a lunatic is a misdemeanour at common law (see note to sec. 330, *post*). The detention of a lunatic may also be justified at common law by showing that it was necessary for his safety or that of others (*ib.*).

Detention of lunatic when justifiable at common law.

"Wilful neglect."

Wilfully neglects.—To leave a knife near a lunatic might amount to wilful neglect;[4] and a conviction before justices has been obtained against the head attendant of an asylum who allowed a patient to go out into the asylum grounds, and remain there unattended for upwards of half-an-hour, at the expiration of which time the patient, who was known by the attendant to be of suicidal tendency, was found to have hanged himself.[5] See memoranda of Commissioners as to epileptic and suicidal patients and as to precautions against fire.

Misdemeanour.—As to protection of persons acting under the statute, see sec. 330, *post*.

Evidence of lunatics. Formerly incompetent. Why?

The question as to the evidence of lunatics may here conveniently be dealt with. Persons of non-sane memory were at one time incompetent to give evidence,[6] partly because they were supposed not to

[1] *Sup.*, note 2 p. 681.

[2] In an earlier portion of his judgment Lord Coleridge showed that the case of *Reg.* v. *Rundle*, if it is an authority at all, "can only be held to be a binding authority in the case of a husband and wife." But *Buchanan* v. *Hardy* practically overruled *Reg.* v. *Rundle*.

[3] Report, p. v. And cp. the 28th Report of the Commissioners in Lunacy, *Cadman's case*, 1873, p. 76, where a female lunatic had attached to her person a chain, two iron weights, and a block of wood weighing about 41 lbs.

[4] Cp. *Dent's case*, 1874, 29th Annual Report of Commissioners in Lunacy, p. 56.

[5] *M. F. Hill's case*, 1886, 50 J.P. 137.

[6] Com. Dig. Test A. 1, unless, of course, during a lucid interval.

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understand the nature and sanction of an oath, partly because they were assumed to be incapable of recollecting or giving a rational account of the events which they had witnessed. But as the varieties of mental disease came to be differentiated, and the distinction between the competency and the credibility of witnesses began to receive practical recognition, this rule was set aside. The law now is as follows :—

Modern law.

1. A deaf, or blind and deaf, mute, although presumed to be an idiot,[1] may give evidence if it appears that he understands the nature and obligation of an oath, and can be communicated with by signs and tokens, or by writing.[2] If a deaf mute can write, that mode of examination is generally adopted. But there is no absolute rule on the subject, and in one case the evidence was taken partly by writing and partly by signs.[3]

1. Deaf, or blind and deaf, mutes.

2. A lunatic may give evidence either *vivâ voce* or upon affidavit, subject to the following rules :—

2. Lunatic.

(1) If he is confined in a lunatic asylum, a *habeas corpus ad testificandum* will be granted for his production on an affidavit that he is not a dangerous lunatic, and in a fit state to be brought before the Court.[4]

Habeas corpus granted where confined.

(2) The witness tendered must first be examined by the Judge to see whether he understands the nature and obligation of an oath, and, before he is sworn, he may be cross-examined, and evidence may be adduced to prove facts showing him to be inadmissible. In *Reg.* v. *Hill*[5] the accused, an attendant in the ward of a lunatic asylum, was indicted for the manslaughter of a patient under his care. The prosecution intimated that a man named Donelly, a patient in the same ward as the deceased, would be called as a witness. On preliminary examination Donelly deposed that he had 20,000 spirits about him, but he was quite sensible on all points not connected with his delusion, understood the nature and sanction of an oath, and gave a perfectly rational account of the transaction in question. In cross-examination Donelly was asked as to the date of the event. He replied, "These creatures insist upon it, it was Tuesday night, and I think it was Monday." "Is what you have told us," he was further asked in cross-examination, "what the spirits told you or what you recollect without the spirits?" He answered that "the spirits only assisted him in speaking of the date." The evidence was admitted, and the ruling was upheld by the Court for Crown Cases Reserved.

Preliminary examination by Judge.

Reg. v. *Hill.*

[1] See *ante*, p. 3.

[2] *R.* v. *Ruston*, 1786, Leach 408; *Morrison* v. *Lennard*, 1827, 3 C. & P. 127. As to civil capacity in other respects of deaf, and blind and deaf, mutes, see *ante* pp. 3, 24. As to their criminal responsibility, see *post*.

[3] *Bartholomew* v. *George*, 1851, cit. *Best's Evid.* 146.

[4] *Fennell* v. *Tait*, 1834, 1 C. M. & R. 584, per Parke, B. Cp. the Scotch cases of *Sheriff* v. *Mitchell*, 1866, 5 Irv. 266; and *Tosh* v. *Ogilvie*, 1873, 1 R. 254.

[5] 1851, 2 Den. C.C. 254. Cp. *Reg.* v. *John Smith*, 1876, 31st Annual Report of Commissioners in Lunacy, p. 121, where an attendant was convicted on the evidence of two epileptic patients; and *Gloucester County Asylum case*, 1878, 33rd Annual Report, p. 125, where Manisty, J., admitted the evidence of a patient, directing the jury, however, to receive it with caution.

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Where evidence taken by affidavit.

(3) Where the evidence of an insane person is taken by affidavit, there ought to be a preliminary inquiry as to his competency by the Commissioner before whom the affidavit is sworn, and the result should be set out in the jurat.[1]

The Court will occasionally postpone a trial of importance if satisfied that an insane witness, without whose testimony the ends of justice might be defeated, will be able to give evidence within a reasonable time. The application for postponement should be made, it seems, before the jury is sworn.[2]

Where attesting witness becomes insane. Deposition.

Where an attesting witness has become insane it will be sufficient to prove his handwriting.[3]

Depositions taken before a magistrate of a witness who subsequently becomes insane are admissible at the trial on proof of insanity.

Shall be liable.—As to protection of persons prosecuted, see sec. 330, *post.*

A penalty.—As to proceedings for recovery of penalties, see sec. 326, *post.*

Penalties for permitting escape and for rescue.

323. If any manager, officer, or servant of an institution for lunatics wilfully permits, or assists, or connives at the escape or attempted escape of a patient, or secretes a patient, he shall for every offence be liable to a penalty not exceeding twenty pounds nor less than two pounds.

This section is based on sec. 124 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), and sec. 39 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111).

Manager.—Definition of, sec. 341, *post.*

Officer.—See note to sec. 280, subs. (1), *ante.*

Institution for lunatics.—Definition of, sec. 341, *post.*

The escape.—As to the recapture of patients, see secs. 85-89, *ante.*

Shall for every offence.—As to protection of persons prosecuted under the statute, see sec. 330, *post.*

A penalty.—As to proceedings for recovery of, see sec. 326, *post.*

Abuse of female lunatic. (Act of 1889, s. 82.)

324. If any manager, officer, nurse, attendant, or other person employed in any institution for lunatics (including an asylum for criminal lunatics), or workhouse, or any person having the care or charge of any single patient, or any attendant of any single patient, carnally knows or

[1] *Spittle* v. *Walton*, 1871, L.R. 11 Eq. 420.

[2] *R.* v. *Wade*, 1825, 1 Moo. C.C. 86; *R.* v. *Kinloch*, 1746, 18 How. St. Tr. 402-8.

[3] *Bernett* v. *Taylor*, 1804, 9 Ves. jun. 381; *Currie* v. *Child*, 1839, 3 Camp. 283.

attempts to have carnal knowledge of any female under care or treatment as a lunatic in the institution or workhouse, or as a single patient, he shall be guilty of a misdemeanour, and, on conviction on indictment, shall be liable to be imprisoned with or without hard labour for any term not exceeding two years; and no consent or alleged consent of such female thereto shall be any defence to an indictment or prosecution for such offence. Sec. 324.

This section re-enacts sec. 82 of the Lunacy Act 1889. The offence against which this section is directed was not infrequent under the old asylum system.

Manager.—Definition of, sec. 341, *post.*

Officer.—See note to sec. 280, subs. (1), *ante.*

Institution for lunatics.—Definition of, sec. 341, *post.*

Including . . . criminal lunatics.—As to asylums for criminal lunatics, see *post.*

Workhouse.—Definition of, sec. 341, *post.*

Single patient.—As to reception of, see sec. 4, *ante.*

No consent.—This provision overrides for the purposes of the section the common law by which there may be capacity to consent. The employment of males in the care of females is prohibited (sec. 53, *ante*). As to rape committed by insane persons, see *post.*

Provision as to consent overrides common law.

325. (1) Except by this Act otherwise provided, proceedings against any person for offences against this Act may be taken— By whom proceedings to be taken.

(*a*) By the secretary of the Commissioners upon their order for any offence;

(*b*) By the clerk of the visitors of any licensed house for an offence committed within their jurisdiction;

(*c*) By the clerk of the visiting committee of an asylum for any offence by any person employed therein;

and such proceedings shall not abate by the death or removal of the prosecuting secretary or clerk, but the same may be continued by his successor, and in any such proceedings the prosecuting secretary or clerk shall be competent to be a witness.

Sec. 325 (1), (2).

This section is based on sec. 106 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and sec. 126 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Except . . . provided.—See sec. 328, *post.*

Proceedings.—As to proceedings for recovery of penalties, see sec. 326, *post.* As to protection of persons against proceedings, see sec. 330, *post.*

(*a*) *The secretary of the Commissioners.*—As to appointment, etc., of secretary to Commissioners, see sec. 154, *ante.*

Upon their order.—The order is given under the seal of the Commission (sec. 152, subs. (2), *ante*). Sometimes the Commissioners do not prosecute, but rest satisfied with an apology, and payment of costs by the offender.[1]

(*b*) *The clerk of the visitors.*—See sec. 178, subs. (1), *ante.*

Any licensed house.—See secs. 177, 207, *ante.*

Within their jurisdiction.—See sec. 177, subs. (1), *ante.*

(*c*) *The clerk of the visiting committee.*—See sec. 176, subs. (1), *ante.* As to visiting committees, see sec. 169, *ante.*

Asylum.—Definition of, sec. 341, *post.*

His successor.—As to vacancy in office of (*a*) secretary to Commissioners, see sec. 154, subs. (3), *ante*; (*b*) clerk to visiting committee and visitors of licensed houses, see sec. 176, subs. (1), and sec. 177, subs. (6), *ante.*

(2) Except as by this Act otherwise provided, it shall not be lawful to take such proceedings except by order of the Commissioners, or of visitors having jurisdiction in the place where the offence was committed, or with the consent of the Attorney-General or Solicitor-General.

See notes to subs. (1), *sup.*

Except . . . provided.—See sec. 328, *post.*

Recovery and application of penalties.

326. All penalties enforceable under this Act shall be recovered summarily according to the provisions of the Summary Jurisdiction Acts, and shall be paid—

(*a*) When recovered by the secretary of the Commissioners, to such secretary;

(*b*) When recovered by the clerk of the visitors of a licensed house, to the clerk of the peace for the

[1] Cp. *Kilsby Jones's case*, 1873, 28th Ann. Rep. of Commissioners in Lunacy, p. 78; 30th Report, p. 76; 34th, p. 120; 39th, p. 118.

county or borough, to be applied in the same way as money received for licences granted by the justices of the county or borough;

(*c*) When recovered by a clerk of the visiting committee of an asylum, to the treasurer of the asylum for the purposes thereof;

(*d*) In all other cases to the treasurer of the county or borough for which the convicting justices acted.

This section is based on sec. 102 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), sec. 127 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), and sec. 5 of the Summary Jurisdiction Act 1884 (47 & 48 Vict. c. 43).

See notes to sec. 325, *sup.*

Penalties provided for by Act.

All penalties . . . this Act.—The penalties provided by the Act are for failure to forward letters of patients (sec. 41, subs. (2), *ante*), or post notices as to letters and interviews (sec. 42, subs. (4), *ante*); refusal to admit friends and relations to patients (sec. 47, subs. (3), *ante*); employment of males in care of females (sec. 53, *ante*); default by clerk of peace in publishing list of visitors (sec. 177, subs. (11), *ante*), or in publishing and communicating to Commissioners name, etc., of clerk to visitors (sec. 178, subs. (4), *ante*); failure to send copy of licence (sec. 215, subs. (2), *ante*), or instrument of transfer (sec. 218, subs. (3), *ante*) to Commissioners; infringement of licence (sec. 220, *ante*); detention of boarder in licensed house contrary to sec. 229, subs. (6), *ante*; failure to send and hang up regulations in hospital (sec. 232, subs. (3), *ante*); detention except in accordance with Act (sec. 315, subs. (1), *ante*); neglect to send notice of admission of single patient (sec. 316, *ante*); non-compliance with Act or Rules (sec. 320, *ante*); obstruction of Commissioners, etc. (sec. 321, *ante*); ill-treatment, etc., of patients (see 322, *ante*); permitting escape or rescue (sec. 323, *ante*); failure to appear, etc., pursuant to summons by Commissioners (sec. 332, subs. (2), *post*).

Recovered summarily.—As to procedure under the Summary Jurisdiction Acts, see Stone's *Justices' Manual.*

The clerk.—See definition of clerk in relation to local authority (sec. 341, *post*).

County.—Definition of, sec. 341, *post.*

To be applied, etc.—See sec. 224, *ante.*

The treasurer of the asylum.—As to, see sec. 276, subs. (1) (*b*) and (*c*), *ante.* Definition of "asylum," sec. 341, *post.*

Appeals.

327. Any person aggrieved by an order of justices under this Act, other than orders adjudicating as to the

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settlement of a lunatic pauper and providing for his maintenance, may appeal to a court of quarter sessions, subject to the conditions and regulations of the Summary Jurisdiction Acts.

This section is based on sec. 104 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), sec. 128 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), and the Summary Jurisdiction Act 1884 (47 & 48 Vict. c. 43).

Person aggrieved.—See notes to corresponding words in sec. 301, subs. (1), *ante*.

Order.—Query whether "order" includes conviction.

Justices.—Definition of, sec. 341, *post*.

Other than, etc.—See secs. 301-10, *ante*.

Providing for his maintenance.—There is no appeal against such orders (see sec. 287, subs. (3), *ante*).

Lunatic pauper.—Definitions of "lunatic" and "pauper," sec. 341, *post*.

Appeal.—See sec. 31 of the Summary Jurisdiction Act 1879 (42 & 43 Vict. c. 49), *inf*.

Quarter sessions.—Definition of, sec. 341, *post*.

Subject to.—The conditions of appeal are contained in sec. 31 of the Summary Jurisdiction Act 1879 (42 & 43 Vict. c. 49).

Procedure on appeal to general or quarter sessions.

31. Where any person is authorised *by this Act or by any future Act*[1] to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter sessions, he may appeal to such court, subject to the conditions and regulations following:—

(1) The appeal shall be made to the prescribed court of general or quarter sessions, or if no court is prescribed, to the next practicable court of general or quarter sessions having jurisdiction in the county borough or place for which the said court of summary jurisdiction acted, and holden not less than fifteen days after the day on which the decision was given upon which the conviction or order was founded; and

(2) The appellant shall, within the prescribed time, or if no time is prescribed within seven days after the day on which the said decision of the court was given, give notice of appeal by serving on the other party[2] and on the clerk of the said

[1] The words in italics were repealed by the Summary Jurisdiction Act 1884, in consequence of the procedure under the Act of 1879 being applied to past as well as future Acts by sec. 6 of that statute.

[2] Only the party defendant can appeal to quarter sessions (*Reg.* v. *Justices of London*, 1890, 25 Q.B.D. 357), but on a point of law either party may appeal to the High Court by case under 20 & 27 Vict. c. 43, and r. 18 of the Summary Jurisdiction Rules 1886. The party obtaining an order may be condemned in costs, though he does not appear (*Reg.* v. *Kent JJ.*, 1896, 12 Times L.R. 342).

court of summary jurisdiction notice in writing of his intention to appeal, and of the general grounds of such appeal; and Sec. 327.

(3) The appellant shall, within the prescribed time, or if no time is prescribed within three days after the day on which he gave notice of appeal, enter into a recognisance before a court of summary jurisdiction, with or without a surety or sureties as that court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the court of appeal thereon, and to pay such costs as may be awarded by the court of appeal, or the appellant may, if the court of summary jurisdiction before whom the appellant appears to enter into a recognisance think it expedient, instead of entering into a recognisance, give such other security, by deposit of money with the clerk of the court of summary jurisdiction or otherwise, as that court deem sufficient; and

(4) Where the appellant is in custody, the court of summary jurisdiction before whom the appellant appears to enter into a recognisance may, if the court think fit, on the appellant entering into such recognisance or giving such other security as aforesaid, release him from custody; and

(5) The court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter, with the opinion of the court of appeal thereon, to a court of summary jurisdiction acting for the same county borough or place as the court by whom the conviction or order appealed against was made, or may make such other order in the matter as the court of appeal may think just, and may by such order exercise any power which the court of summary jurisdiction might have exercised, and such order shall have the same effect, and may be enforced in the same manner, as if it had been made by the court of summary jurisdiction. The court of appeal may also make such order as to costs to be paid by either party as the court may think just; and

(6) Whenever a decision is not confirmed by the court of appeal, the clerk of the peace shall send to the clerk of the court of summary jurisdiction from whose decision the appeal was made, for entry in his register, and also indorse on the conviction or order appealed against, a memorandum of the decision of the court of appeal, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the said decision in every case where

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such copy or certificate would be sufficient evidence of such conviction or order; and

(7) Every notice in writing required by this section to be given by an appellant shall be in writing signed by him, or by his agent on his behalf, and may be transmitted as a registered letter by the post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post.

Secretary of State may direct prosecution.

328. A Secretary of State on the report of the Commissioners or visitors of any institution for lunatics may direct the Attorney-General to prosecute on the part of the Crown any person alleged to have committed a misdemeanour under this Act.

This section is based on sec. 56 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and sec. 84 of the Lunacy Act 1889.

A Secretary of State.—"One of Her Majesty's principal Secretaries of State" (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3). In practice the Home Secretary.

On the report.—See sec. 205, *ante*.

The Commissioners.—As to visitation by, see secs. 187-206, *ante*.

Visitors.—As to visitation by, see secs. 188-90, 192-97, *ante*.

Institution for lunatics.—Definition of, sec. 341, *post*.

Misdemeanours under the Act.

A misdemeanour under this Act.—The misdemeanours under the Act are—wilful omission, on presentation of second, to state facts relating to former, petition (sec. 7, subs. (4), *ante*); wilful omission to perform any duty under sec. 8, *ante*; detention of patient after expiration of reception order (sec. 38, subs. (7), *ante*); contravention of provisions as to mechanical restraint (sec. 40, subs. (7), *ante*); failure of person in charge of single patient to give effect to directions by Commissioners (sec. 44, subs. (4), *ante*); failure to give effect to order of discharge (sec. 76, subs. (2), *ante*); acting by disqualified person as Commissioner (sec. 158, subs. (3), *ante*), or visitor (sec. 177, subs. (5), *ante*); failure by manager of hospital or licensed house to show building and patients to visitors (sec. 195, subs. (2), *ante*), or to send copy of minutes as to doubtful patients (sec. 197, subs. (3), *ante*); refusal of person having charge of single patient to permit inspection (sec. 200, subs. (2), *ante*); untrue statement by applicant for licence (sec. 214, *ante*); detention of patient after expiration or revocation of licence (sec. 222, *ante*); reception of lunatic in hospital contrary to complete certificate of registration (sec. 231, subs. (10), *ante*); using buildings not shown in plans for accommodation of lunatics (sec. 233, subs. (2), *ante*); detention of lunatic in hospital after date appointed for closing (sec. 237, subs. (4), *ante*); detention of lunatics except in accordance with Act (sec. 315, subss. (1) and (3), *ante*); neglect to send

notices on admission (sec. 316, *ante*); misstatements in petitions, etc. (sec. 317, *ante*); false entries (sec. 318, *ante*); failure to send notice to coroner of death (sec. 319, *ante*); obstruction of Commissioners, etc. (sec. 321, subs. (1), *ante*); ill-treatment of patients (sec. 322, *ante*); abuse of female lunatics (sec. 324, *ante*). Sec. 329 (1), (2).

329. (1) Where any person is proceeded against under this Act on a charge of omitting to transmit or send any copy, list, notice, statement, report, or other document required to be transmitted or sent by such person, the burden of proof that the same was transmitted or sent within the time required shall lie upon such person; but if he proves by the testimony of one witness upon oath that the copy, list, notice, statement, report, or document in respect of which the proceeding is taken was properly addressed and put into the post in due time, or (in case of documents required to be sent to the Commissioners or a clerk of the peace or a clerk to guardians) left at the Office of the Commissioners or of the clerk of the peace or clerk to guardians, such proof shall be a bar to all further proceedings in respect of such charge. Evidence upon prosecution. (Act of 1889, s. 86, subs. (1).)

This subsection re-enacts sec. 86, subs. (1) of the Lunacy Act 1889.

Oath.—The term "oath" includes affirmation and declaration where these may be made (as to which see Oaths Act 1888, 51 & 52 Vict. c. 46) instead of an oath (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3). Oath.

Due time, i.e. within the prescribed time, or where no time is prescribed, within reasonable time. See note to words "reasonable time" in sec. 302. "Due time."

Left.—The words "due time" must be taken as added to this clause, although they do not belong to it grammatically.

The Office of the Commissioners.—Communications to the Commissioners should be addressed:

SECRETARY,
Commissioners in Lunacy,
19 Whitehall Place, S.W.

(2) In proceedings under this Act, where a question arises whether a house is or is not a licensed house or registered as a hospital, it shall be presumed not to be so (Act of 1889, s. 86, subs. (2).)

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licensed or registered unless the licence or certificate of registration is produced, or sufficient evidence is given that a licence or certificate is in force.

This subsection re-enacts sec. 86, subs. (2) of the Lunacy Act 1889.

A licensed house.—See sec. 207, *ante*.

Registered, etc.—See sec. 230, *ante*.

Presumed.—The presumption is *juris tantum*, and may be rebutted by "sufficient evidence."

Certificate of registration.—As to, see sec. 231, subss. (4) and (6), *ante*.

Sufficient evidence.

Sufficient evidence.—*Semble*, that "sufficient" here means "conclusive." [1]

Protection to persons putting the Act in force. (Act of 1889, s. 12, subs. (1).)

330. (1) A person who before the passing of this Act has signed or carried out or done any act with a view to sign or carry out an order purporting to be a reception order, or a medical certificate that a person is of unsound mind, and a person who after the passing of this Act presents a petition for any such order, or signs or carries out or does any act with a view to sign or carry out an order purporting to be a reception order, or any report or certificate purporting to be a report or certificate under this Act, or does anything in pursuance of this Act, shall not be liable to any civil or criminal proceedings whether on the ground of want of jurisdiction or on any other ground if such person has acted in good faith and with reasonable care.

Origin of subsection.

This subsection re-enacts sec. 12, subs. (1) of the Lunacy Act 1889. There was a similar provision in the Lunacy Act 1845 (8 & 9 Vict. c. 100), but it protected only the medical man, the keeper of the asylum, and servants, and it was held accordingly in *Fletcher* v. *Fletcher* [2] that a person signing the order for arrest could only justify the confinement by pleading that the person whom he ordered to be confined was at the time of unsound mind, and dangerous to himself or others, which constitutes a justification for the detention of a lunatic at common law.[3]

Before the passing, etc., i.e. before May 1890 (see sec. 3, *ante*).

Scope of subsection.

Has signed . . . mind.—It will be observed that this subsection is

[1] Cp. *Lewis* v. *Leonard*, 1880, 28 W.R. 719.

[2] 1859, 23 J.P. 469.

[3] Cp. Bro. Ab. *Faux Imprisonment*, pl. 28; Bac. Abr. tit. Idiot, C.; *Eliot* v. *Allen*, 1845, 1 C.B. 18-26.

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partly retrospective and partly prospective in its operation. It extends to (*a*) any person who *before* the passing of the Act has signed or carried out or done any act with a view to sign or carry out "an order purporting to be a reception order, or a medical certificate that a person is of unsound mind"; and (*b*) any person who *after* the passing of the Act presents a *petition* for a reception order, or signs or carries out or does any act with a view to sign or carry out "an order purporting to be a reception order," or "any report or certificate" purporting to be a report or certificate under the Act, or "does anything in pursuance of the Act."

Retrospective operation.

The *retrospective* operation of the subsection is now of comparatively little importance. As to its prospective operation, see following note.

Prospective operation.

A person who after, etc.—The *prospective* sweep of the subsection is very wide. It extends to petitions, reception orders, medical certificates, all the reports and certificates prescribed by the statute or the rules, and generally to everything "done in pursuance of the Act" (as to the meaning of which expression, see *inf.*).

Presents a petition.—See sec. 4, *ante.*

"With a view to sign or carry out."

With a view to sign or carry out, even if the order, report, or certificate is not ultimately signed or carried out by the person invoking the benefit of the section. A., a medical practitioner acting in good faith and with reasonable care, examined an alleged lunatic *with a view* to certify as to his mental condition for the purposes of a reception order, but on such examination *did not certify* that the alleged lunatic was of unsound mind. A. is protected by the subsection.

Reception order.—As to reception orders, see secs. 4-11, 13-23, 28-38, *ante;* and definition of, sec. 341, *post.*

Report or certificate.—The reports and certificates under the Act are enumerated in the index.

Meaning of "in pursuance."

Does anything in pursuance, etc.—A person acts "in pursuance of" a statute if he honestly intends to put its provisions in force, and really and not unreasonably believes in circumstances which, if existent, would justify his action, and acts accordingly, even if his belief is erroneous.[1]

Detention of lunatic, when justifiable apart from statute.

Apart from the Lunacy Acts, any one may detain or restrain a lunatic, if necessary for his safety or that of others.[2]

Anderdon v. *Burrows.*

It was laid down by Lord Tenterden, C.J., in *Anderdon* v. *Burrows*,[3] that a medical man is not warranted, merely on statements made by the relations of a person supposed to be insane, in sending men to take him into custody and confine him, unless he is satisfied from those statements that such a step is necessary to prevent some immediate injury being done by the individual, either to himself or

[1] Cp. *Hermann* v. *Seneschal*, 1862, 32 L.J. C.P. 43. See also other cases collected in Stroud's *Judicial Dict.*, under "pursuance"; and *Hall* v. *Semple*, 1862, 3 F. & F. 355, 357.

[2] *Brookshaw* v. *Hopkins*, 13 Geo. III. Lofft. 243; *Scott* v. *Wakem*, 1862, 3 F. & F. 328.

[3] 1830, 4 C. & P., at pp. 213, 214.

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other persons; and that if access cannot be had for the purpose of examination, application should be made to the Lord Chancellor, that the party may be taken up under his authority.

Burden of proof.

Shall not be liable.—The defendant will therefore plead that he acted in good faith and with reasonable care, and it will be for the plaintiff or prosecutor to establish the contrary.[1] Where, however, the defendant avails himself of the summary procedure provided by subs. (2), *inf.*, the onus of satisfying the Court that "there is no reasonable ground for alleging want of good faith or reasonable care" will rest upon him.[2]

If such person.—See preceding note.

"Good faith."

Good faith.—The words "good faith" have no technical legal signification, but are to be taken in their ordinary acceptation, and mean simply, honesty in belief, purpose, or conduct.[3]

"Reasonable care."

Reasonable care, i.e. such care as it is reasonable to expect that a person undertaking to act "in pursuance of" the statute should exhibit. Civil or criminal proceedings are not maintainable unless culpable negligence is proved.[4]

(Act of 1889, s. 12, subs. (2).)

(2) If any proceedings are taken against any person for signing or carrying out or doing any act with a view to sign or carry out any such order, report, or certificate, or presenting any such petition as in the preceding subsection mentioned, or doing anything in pursuance of this Act, such proceedings may, upon summary application to the High Court or a Judge thereof, be stayed upon such terms as to costs and otherwise as the Court or Judge may think fit, if the Court or Judge is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care.

This subsection re-enacts sec. 12, subs. (2) of the Lunacy Act 1889.

See notes to subs. (1), *sup.*

Meaning of "proceedings."

Any proceedings.—*Semble*, that civil proceedings alone are meant.

Query whether action would lie by pauper against medical officer.

Any person.—In the case of *Williams* v. *Beaumont and Duke*,[1] decided in 1894, Wills, J., doubted whether an action would lie by a pauper

[1] *Williams* v. *Beaumont and Duke*, 1894, 10 Times L.R. 489, 543; *Stevenson* v. *Potter*, 1894, 29 L.J. 200.

[2] *Williams* v. *Beaumont and Duke*, *ubi sup.*, at p. 544.

[3] Cp. *Butcher* v. *Stead*, 1875, L.R. 7, H.L. 839; *re Avery*, 1887, 36 Ch.D. 307; *ex parte Watson*, 1888, 21 Q.B.D. 301; *Tatam* v. *Hasler*, 1889, 23 Q.B.D. 345; and see the American cases of *Hurleby* v. *Martine*, 1890, 31 N.Y. St. Rep. 471; and *Blodgett* (an inebriety case), *Boston Med. and Surg. Jour.*, 6th June 1881.

[4] Cp. *Hall* v. *Semple*, 1862, 3 F. & F., at p. 354; *Williams* v. *Beaumont and Duke*, 1894, 10 Times L.R. 489, 543.

lunatic against the medical officer for anything done under the Act. If it would lie, said the learned Judge, why should not a prisoner convicted of misdemeanour sue the gaol surgeon?

Application.

Upon summary application.—The application may be made by summons in Chambers,[1] supported by affidavits, whenever proceedings have been taken, and should be made as soon as the defendant is in possession of the necessary evidence. The plaintiff may file affidavits in answer, and the defendant has then the right to file affidavits in reply.

If the Court or Judge.—The onus is on the defendant (see note to "shall not be liable" in subs. (1)).

Inherent jurisdiction of Courts to stay proceedings.

Be stayed.—The Superior Courts have an inherent general jurisdiction to protect their process from abuse by dismissing actions which are manifestly frivolous and vexatious. The defendant, in order to obtain the benefit of this jurisdiction, has to satisfy the conscience of the Court by affidavits—to which the plaintiff is entitled to reply—that the action is absolutely groundless; and the application is therefore most properly made after the plaintiff's statement of claim.[2]

Jurisdiction under Rules of the Supreme Court.

The Rules of the Supreme Court 1883 added a *statutory* jurisdiction to this inherent general jurisdiction. Under these Rules (Order xxv. r. 4) "the Court or a Judge may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, and in any such case, or in case of the action or defence being shown by the pleading to be frivolous or vexatious, the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just." The scope of this rule and its relation to the old inherent jurisdiction of the Superior Courts have been well settled by a variety of decisions with which it is unnecessary to deal exhaustively.[3] Prior to 1883 an action was dismissed only when it appeared, or was shown to be, absolutely groundless, or frivolous and vexatious. If the plaintiff's claim raised any *substantial* legal question the Court would not dismiss the action on any summary application, but the question of law had to be brought forward for argument by "demurrer." The Rules of 1883 have put the law in the following position: (1) Where the plaintiff's claim discloses *no cause of action at all*, or where the action is shown by the pleadings to be *frivolous and vexatious*, the Court may, either under its inherent jurisdiction or under the order above quoted, dismiss the action altogether. (2) If the claim raises any substantial point of law, the Court will neither strike it out nor dismiss the action. In such case the defendant must take objection to the sufficiency of the claim in his defence, and the point of law

Relation to old inherent jurisdiction.

[1] See form of, Appx. *post*. The summons may be in the alternative for staying of the proceedings or for security for costs.

[2] Cp. *Dawkins* v. *Lord Rokeby*, 1875, L.R. 7 H.L. 744; *Castro* v. *Murray*, 1875, L.R. 10 Ex. 213; *Dawkins* v. *Prince Edward of Saxe-Weimar*, 1876, 1 Q.B.D. 499; *Metropolitan Bank* v. *Pooley*, 1885, 10 A.C., per Lord Blackburn, at p. 221.

[3] See *Annual Practice*, notes to Ord. xxv. r. 4.

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will be argued and decided at or after the trial. So far the new rules have made no substantial alteration in the old practice. (3) If, however, a claim, while not absolutely groundless in the opinion of the Court or a Judge, discloses no *reasonable* cause of action, the Court or Judge may either strike it out or dismiss the action.

Defendant may apply for stay under inherent jurisdiction or Order xxv.

The summary procedure under this section enables a defendant to have proceedings stayed on the ground that there is no case against him on the merits. A defendant who cannot avail himself of the statutory protection for any reason, may apply to the Court to stay proceedings under either its inherent jurisdiction (*sup.*) or Order xxv. of the R.S.C. 1883, *sup.*, if he can bring his case within the necessary conditions.

If application dismissed, action proceeds to trial. Costs.

If an application under this section is refused, the action proceeds to trial just as if none had been made.

Costs.—The costs are in the discretion of the Court or Judge, and may be granted, refused, or (in case the application is unsuccessful), reserved to the trial. No general rules can be laid down as to the manner in which this discretion will be exercised; each case stands upon, and will be decided according to, its own merits.

"Reasonable care."

Reasonable care.—The point on which a defendant seeking the protection of sec. 330 of the Act of 1890 must satisfy the Court is that he exhibited the care, the knowledge, and the skill reasonably to be expected from a person *undertaking the act which is the subject of judicial inquiry.*[1]

Actions by persons detained as lunatics.

331. (1) *Any action brought by any person who has been detained as a lunatic against any person for anything done under this Act shall be commenced within twelve months next after the release of the party bringing the action, and shall be laid or brought in the county or borough where the cause of action arose, and not elsewhere.*

This section, which was based on sec. 105 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), was repealed by the Public Authorities Protection Act 1893 (56 & 57 Vict. c. 61), sec. 1 of which is substituted for it.

(2) *If the action is brought in any other county or borough or is not commenced within the time limited for bringing the same, judgment shall be given for the defendant.*

See notes to subs. (1).

[1] *Hall* v. *Semple*, 1862, 3 F. & F., at p. 354.

Sec. 331 (2).

Public Authorities Protection Act 1893. Protection of persons acting in execution of statutory or other public duty.

1. Where after the commencement of this Act any action, prosecution, or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such act, duty, or authority, the following provisions shall have effect:

(*a*) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof;

(*b*) Wherever in any such action a judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client;

(*c*) Where the proceeding is an action for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into Court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment; but this provision shall not affect costs on any injunction in the action;

(*d*) If, in the opinion of the Court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the commencement of the proceeding, the Court may award to the defendant costs to be taxed as between solicitor and client.

This section shall not affect any proceedings by any department of the Government against any local authority or officer of a local authority.

Commencement of Act.

After the commencement, etc.—The Act came into operation on 1st January 1894.

Meaning of "action."

Action.—The term "action" means a litigation in a civil court for the recovery of individual right or the redress of individual wrong.[1]

[1] Cp. *Bradlaugh* v. *Clarke*, 1883, 8 App. Cas. 354; and Stroud's *Judicial Dict.* p. 13.

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Includes action for injunction; but, *semble*, not penal actions.

Meaning of "prosecution."

Meaning of "proceeding."

Includes step in action and penal action.

"In pursuance."

Meaning of "execution."

"Intended execution."

Intention no defence on merits.

Act means *all* Acts.

Meaning of "public duty."

Meaning of "authority."

"Within six months."

Effect of provision.

It includes actions where an injunction is part of the relief claimed.[1] *Semble*, that proceedings for the recovery of penalties fall under "proceeding," *inf.*

Prosecution.—This term applies to criminal proceedings.

Proceeding.—*Semble*, that a step in an action is a proceeding,[2] and that this term includes proceedings for the recovery of penalties.[3]

In pursuance.—See note to same words in sec. 330, subs. (2), *ante.*

Execution.—The term "execution" means execution with reasonable and proper care and skill.[4]

Intended execution.—The word "intended" is here used in the same sense as the words "with a view to" in sec. 330, *ante.* It covers cases where there is no *actual* execution. But intention is no defence on the merits.[5]

Act of Parliament.—These words include all Acts, public or private.

Public duty.—This appears to mean duty imposed upon public servants or officers or bodies.

Authority.—"Authority" appears to mean legal right to act in any way, whether existing at common law or conferred by statute or rules.

Within six months.—"Month" means calendar month (Interpretation Act 1889 (52 and 53 Vict. c. 63) sec. 3). The date of the act, neglect, or default is omitted from the computation.[6]

It shall . . . client.—This provision removes the doubt raised in *Andrews* v. *Barnes*[7] as to whether the High Court under its common law jurisdiction could award solicitor and client costs.

Before the action.—If the plaintiff does not give the defendant a sufficient opportunity of tendering amends, he may be deprived of costs under subs. (*d*).

In satisfaction of the plaintiff's claim.—See R.S.C. Ord. xxv. rr. 1, 3, 4.

Costs on any injunction.—"Action" therefore includes an action for an injunction.

"Department of the Government."

Department of the Government.—There has been no judicial definition of this expression. What seems to be pointed at is inquiries by such bodies as the Local Government Board, *e.g.* into charges against guardians or medical officers of workhouses.

"Local authority."

Local authority.—For definition of, see sec. 240 of the Lunacy Act 1890, *ante.*

Commissioners and visitors may summon witnesses.

332. (1) The Commissioners, or any two of them, and also the visitors of any licensed house, or any two of them, may, as they see occasion, require, by summons under the

[1] See subs. (*c*), *sup.*

[2] *Houlston* v. *Woodall*, 1885, 78 L.T. Jo. 113.

[3] Cp. *re Briton Medical Assurance Association*, 1886, 32 Ch.D. 503; and Stroud, p. 617.

[4] *Clothier* v. *Webster*, 1862, 12 C.B., N.S., 790.

[5] Cp. *Selmes* v. *Judge*, 1871, L.R. 6 Q.B. 724.

[6] *Williams* v. *Burgess*, 1841, 10 L.J. Q.B. 10.

[7] 1888, 39 Ch.D. 133.

common seal of the Commission, if by the Commissioners, and if by two only of the Commissioners or by two visitors, then under the hands and seals of such two Commissioners or two visitors, as the case may be, any person to appear before them to testify on oath touching any matters respecting which such Commissioners and visitors respectively are by this Act authorised to inquire (which oath such Commissioners or visitors are hereby empowered to administer).

Form 22.

This subsection re-enacts the first clause of sec. 100 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Summons.—See form of summons, Form 22, Sched. ii., *post.* As to use of forms, see sec. 339, *post.*

Common seal.—See sec. 152, subs. (1), *ante.*

Oath.—See note to sec. 329, subs. (1), *ante.*

(2) Every person who does not appear pursuant to the summons, or does not assign some reasonable excuse for not appearing, or who appears and refuses to be sworn or examined, shall, on being convicted thereof before a court of summary jurisdiction, for every such neglect or refusal be liable to a penalty not exceeding fifty pounds.

This subsection re-enacts the second clause of sec. 100 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

"Reasonable excuse."

Reasonable excuse, i.e. reasonable under the circumstances of the case (see note to "reasonable time" in sec. 302, *ante*).

Court of summary jurisdiction.—See definition of, Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3, and see *Reg.* v. *Glamorganshire JJ.*[1]

A penalty.—As to recovery of, see sec. 326, *ante.*

(3) Any two or more Commissioners or visitors may, if they think fit, examine on oath any person appearing before them as a witness, without having been summoned.

This subsection re-enacts sec. 46 of the Lunacy Acts Amendment Act 1862 (25 & 26 Vict. c. 111).

(4) Any Commissioners or visitors who summon a person to appear and give evidence, may direct the

[1] 1892, 1 Q.B., at pp. 628, 629.

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secretary of the Commissioners or the clerk of such visitors, as the case may be, to pay to such person all reasonable expenses of his appearance and attendance, the same to be considered as expenses incurred in the execution of this Act, and to be taken into account and paid accordingly.

This subsection re-enacts sec. 101 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

"May." *May.*—*Semble*, that "may" has here compulsory force.[1]

The secretary.—See sec. 154, *ante*.

The clerk.—See sec. 176, subs. (1), *ante*.

"Reasonable expenses." *Reasonable expenses*, *i.e.* expenses reasonably and properly incurred under the circumstances of the case (see note to subs. (2), *sup.*).

Part XII.

MISCELLANEOUS PROVISIONS, DEFINITIONS, REPEAL.

Indemnity to Bank and others.

333. This Act, and every order purporting to be made under this Act, shall be a full indemnity and discharge to the Bank and every other company and society and their respective officers and servants, and all other persons respectively, for all acts and things done or permitted to be done pursuant thereto, or pursuant to the Rules under this Act, so far as relates to any property in which a lunatic is interested either in his own right, or as trustee or mortgagee, and it shall not be necessary to inquire into the propriety of any order purporting to be made under this Act relating to any such property or the jurisdiction to make the same.

This section re-enacts sec. 144 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), and the second clause of sec. 17 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86), and sec. 7 of the Trustees Extension Act 1852 (15 & 16 Vict. c. 55) so far as it applied to lunatics.

Full indemnity.—See also sec. 299, subs. (2), *ante*, as to justices' orders for application of lunatic's property to his maintenance.

[1] Cp. *Julius* v. *Bishop of Oxford*, 1880, 5 App. Cas. 214.

The Bank, i.e. of England (sec. 341, *post*).
Rules under this Act.—See sec. 338, *post.*
Property.—Definition of, sec. 341, *post.*
Lunatic.—Definition of, sec. 341, *post.*
Trustee or mortgagee.—See definitions of "trust" and "mortgage," sec. 341, *post.*

Meaning of word "commission" in other Acts extended.

334. Where in any Act of Parliament, order or rule of court, or instrument, reference is made to a commission of lunacy, or the inquisition thereon, the general commission and the inquisition, or certificate operating as an inquisition, and the issue and verdict thereon respectively in this Act mentioned, shall be deemed to be included in the reference.

This section re-enacts sec. 51 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70), and sec. 5 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86).
A commission.—See *ante* p. 389.
The inquisition thereon.—See sec. 92, *ante.*
The general commission.—See sec. 112, *ante.*
Or certificate, etc.—See sec. 95, *ante.*
The issue and verdict.—See sec. 94, *ante.*
Shall be deemed, i.e. shall be taken *primâ facie* to be (see *ante* p. 138).

Pension of lunatic payable by public department. (Act of 1889, s. 55).

335. When any sum in respect of pay, pension, superannuation, or other allowance, or annuity under the control or management of any public department, is payable to any person, in respect either of service as a civil servant or of military or naval service or of provision for a widow or child of a person employed in civil, military, or naval service, and the person to whom the sum is payable is certified by a justice or minister of religion, and by a medical practitioner, to be unable by reason of mental disability to manage his or her affairs, the public department may pay so much of the said sum as the department may think fit to the institution or person having the care of the disabled person, and may pay the surplus, if any, or such part thereof, as the department may think fit, for or

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towards the maintenance and benefit of the wife or husband and relatives of the disabled person, and the department shall be discharged from all liability in respect of any sums so paid.

This section re-enacts sec. 55 of the Lunacy Act 1889.

Public department.—Definition of, sec. 341, *post.*

Civil servant.

Civil servant.—The term is not defined in the Act. Probably the definition given in the Superannuation Act 1887 (50 & 51 Vict. c. 67) might be followed, viz. a person who has served in an established capacity in the permanent civil service of the State, within the meaning of sec. 17 of the Superannuation Act 1859.

Sec. 17 of the Superannuation Act 1859 (22 Vict. c. 6) provides "that for the purposes of this Act, no person hereafter to be appointed shall be deemed[1] to have served in the permanent civil service of the State unless such person holds his appointment directly from the Crown, or has been admitted into the civil service with a certificate from the Civil Service Commissioners; nor shall any person already appointed to any office be held to have served in the permanent civil service as aforesaid, unless such person belong to a class which is already entitled to a superannuation allowance, or to a class in which, if he had been appointed thereto subsequently to the passing of this Act, he would, as holding his appointment directly from the Crown, or as having been admitted into the civil service with such certificate as aforesaid, have become entitled to such allowance."

Certified.—See forms of certificate of disability, Forms 16 and 17, Sched. ii., *post.*

Wilful misstatement of material fact is a misdemeanour (sec. 317, subs. (2), *ante*).

Protection of persons signing, sec. 330, *ante.*

Justice.—Definition of, sec. 341, *post.*

"Minister of religion."

Minister of religion.—These words include both a clergyman and a dissenting minister.

Medical practitioner.—Definition of, sec. 341, *post.*

The institution.—See definition of "institution for lunatics," sec. 341, *post.*

Reception orders before Act.

336. In the case of orders made before the commencement of this Act for the reception of private patients, the person who signed the reception order shall have all the powers and be subject to the obligations by this Act conferred or imposed upon the petitioner for a reception order, and the provisions of this Act relating to persons upon

[1] *I.e.* the person not coming within the conditions will be taken conclusively not to be a civil servant (see *ante* p. 138).

whose petition a reception order was made shall apply in the case of a person who before the commencement of this Act has signed an order for the reception of a private patient, as if the order had been made after the commencement of this Act upon a petition presented by him. Sec. 337 (1).

The commencement of this Act, *i.e.* 1st May 1890 (sec. 3, *ante*).
Private patients.—Definition of, sec. 341, *post*.
As to reception of, see secs. 4 and 5, *ante*.
The person who signed, *i.e.* under the old practice.
All the powers, viz. to approve of absence on trial or for health (see sec. 55, subs. (5), *ante*); to order removal (see sec. 58, *ante*), or discharge (see sec. 72, *ante*); and right to notice of discharge by Commissioners (see sec. 76, subs. (1) (*a*), *ante*), or visitors (see sec. 78, subs. (4), *ante*), and to notice of recovery (see sec. 83, *ante*). Person signing reception order, powers of.
The obligations, *e.g.* to visit patient once at least in every six months (see sec. 5, subs. (3), *ante*). Obligations of.

337. (1) The Lord Chancellor may, if it seems expedient to him so to do, by order under his hand, amalgamate the office of the Masters and their staff, and the office of the Chancery Visitors and their staff, and may amalgamate such offices, or either of them, with the office of the Commissioners, and may give such directions as he may think fit for the reconstitution of the Commissioners, and for the exercise and performance of the powers and duties of the Commissioners, and of the officers and staff amalgamated respectively under any order under this section. Power to amalgamate the lunacy departments. (Act of 1889, s. 87, subs. (1).)

This section re-enacts sec. 87, subs. (1) of the Lunacy Act 1889.
The amalgamation of the lunacy departments has been frequently suggested. The Select Committee of 1859 recommended it (Report, 1860, p. 495, xiii.), and a scheme for effecting it is embodied in one of the appendices to their report (*ubi sup.* p. 53, No. 4). The present section is, however, the outcome of the labours of the Dillwyn Committee of 1878. Amalgamation. Observations on by Committees of 1859 and 1878.
In their Report, pp. v. vi., that Committee said:—"There appears to be a general concurrence of opinion that the best security against the undue detention of patients consists in personal examination, such as that by the Chancery Visitors. There seems no valid reason why the possession of property should make any difference in the personal treatment of lunatics, or in the supervision exercised over them. Either the Chancery lunatics, who number less than a thousand,

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have too much care bestowed upon them, or the others, who exceed sixty-five thousand, have far too little. The property might still remain under the care of the Masters in whatever way may be considered best; but it seems reasonable that all lunatics should be treated on the same system as far as admission, detention, supervision, and release are concerned. And though it may be true that the lunacy of the majority of patients in an asylum is self-evident, yet it seems physically impossible that with the present strength of the Lunacy Commissioners, minute supervision of those who require it can be efficiently exercised. It may be that by some amalgamation of the two departments waste of power in visiting might be obviated, and the delay and expense frequently attending the discharge of Chancery lunatics be avoided, and stricter supervision exercised over single patients, who are said to require it more than others, and yet are visited only once a year by the Commissioners, and for visiting whom there is no statutory obligation."

The Lord Chancellor.—See definition of cited *ante* p. 198.

The Commissioners.—See sec. 150, *ante*, and sec. 341, *post.*

Scope of subsection.

Amalgamate.—It will be observed that this section provides for either a general amalgamation of the three lunacy departments, or the amalgamation of the Masters' and Visitors' offices, or the amalgamation of either of these with the Commissioners' office. There are serious difficulties, however, in the way of the effectuation of the policy of this section. *Semble*, no complete re-organisation of the lunacy departments could be attained without legislation, in view of the express provisions in the statute that "there shall continue to be" Masters in Lunacy (sec. 111, subs. (1), *ante*), Commissioners in Lunacy (sec. 150, subs. (1), *ante*), and Chancery Visitors (sec. 163 subs. (1), *ante*). Again, it would be unfair that the estates of Chancery lunatics should be burdened with the additional expense which complete amalgamation would involve. Moreover, the steady increase of the powers of local authorities in regard to lunatics rather points to the problem in question being ultimately solved by the abolition of the office of Commissioners in Lunacy and the amalgamation of the offices of the Masters and the Chancery Visitors. See Report of Sir Geo. Jessel's Committee, 1883.

The Chancery Visitors.—See secs. 163-68, *ante.*

The Masters.—See sec. 111, *ante*, and sec. 341, *post.*

(Act of 1889, s. 87, subs. (2).)

(2) In the event of any such amalgamation, the Lord Chancellor may, with the concurrence of the Treasury, fix the qualifications and salaries of the members of the amalgamated office and of the staff attached thereto, and may, with such concurrence, increase or diminish the number of such members and staff.

Sec. 337 (3), (4).

This subsection re-enacts sec. 87, subs. (2) of the Lunacy Act 1889 (see notes to subs. (1), *sup.*).

Treasury.—See definition of cited *ante* p. 190.

The qualifications.—As to qualifications for office of Master in Lunacy, see sec. 111, subs. (3), *ante*; of Commissioner, see sec. 151, subs. (2), *ante*; of Secretary to Commissioners, see sec. 154, subs. (5), *ante*; of Chancery Visitor, see sec. 163, subs. (2), *ante*.

Salaries.—As to salaries attached to offices above noted, see *ante* pp. 388, 470, 478, 487.

(Act of 1889. s. 87, subs. (3).)

(3) An order under this section shall not be made so as to prejudice the rights of the Masters, Visitors, and Commissioners respectively holding office at the passing of this Act.

This subsection re-enacts sec. 87, subs. (3) of the Lunacy Act 1889 (see notes to subss. (1) and (2), *sup.*).

The passing of this Act.—The Act passed on 29th March 1890.

(Act of 1889, s. 87, subs. (4).)

(4) The Lord Chancellor may by order direct that such proportion as he may consider reasonable of the expenses incurred in carrying any such amalgamation into effect, including the cost of providing office accommodation, shall be paid out of the percentage charged on the incomes of lunatics.

This subsection re-enacts sec. 87, subs. (4) of the Lunacy Act 1889.

The percentage.—See secs. 148 and 149, *ante*.

Lunatics.—Definition of, sec. 341, *post*.

Power to make rules. (Act of 1889, s. 88, subs. (1).)

338. (1) It shall be lawful for the Commissioners, with the approval of the Lord Chancellor, by rules, to prescribe the books to be kept in institutions for lunatics and houses for single patients, and the entries to be made therein, and the returns, reports, extracts, copies, statements, notices, plans, documents, and information to be sent to the Commissioners or any authority or person, and the persons by whom, the times within which, and the manner in which, such entries, returns, reports, extracts, copies, statements, notices, plans, documents, and information are to be made

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and sent; and also by rules to prescribe forms for the purposes aforesaid in addition to or in substitution for any forms now in use.

This subsection re-enacts sec. 88, subs. (1) of the Lunacy Act 1889.

It shall be lawful.—These words have here a permissive force.

The Commissioners.—See sec. 150, *ante*, and sec. 341, *post.*

The Lord Chancellor.—See definition of cited *ante* p. 198. As to power of Lord Chancellor to make rules, see subs. (2), *inf.*

Rules.—The Rules of the Commissioners now in force will be found *post.* Expressions used in the rules, unless the contrary intention appears, have the same meanings respectively as the same terms in the Act (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 31).

Institutions for lunatics.—Definition of, sec. 341, *post.*

Single patients.—As to reception of, see secs. 4 and 5, *ante.*

(Act of 1889, s. 88, subs. (2).) Repealed by Act of 1891, s. 29 and Sched.

(2) Subject to the preceding subsection, the Lord Chancellor may make rules *in lunacy* for carrying this or any other Act relating to lunacy into effect, and also for regulating costs in relation thereto.

Act of 1891, s. 27, subs. (2).

27. (2) The power to make rules under section three hundred and thirty-eight, subsection (2) of the principal Act shall extend to all applications under the principal Act and this Act, and also to applications in the Chancery Division of the High Court in cases where such applications are also made under the principal Act.

Subs. (2) of sec. 338 re-enacts sec. 88, subs. (2) of the Lunacy Act 1889.

See notes to subs. (1), *sup.*

Subject to.—Rules relating to the matters enumerated in subs. (1), *sup.*, are intended to be made, not by the Lord Chancellor, but by the Commissioners in Lunacy, with the Lord Chancellor's approval.

Rules in lunacy.—For the rules now in force, see Appx. *post.*

(Act of 1889, s. 88, subs. (3).)

(3) Where by any Act already passed or hereafter to be passed any application in lunacy is directed or authorised to be made by petition, or in any other specified manner, the Lord Chancellor may by rule direct in what manner the application is to be made.

This subsection re-enacts sec. 88, subs. (3) of the Lunacy Act 1883. Sec. 338 (4)-(6).

See notes to subs. (1).

By rule.—See Rules in Lunacy 1892, rr. 16-21, *post.*

(4) The Lord Chancellor and a Secretary of State respectively may by rules provide for preventing interference or delay in the exercise of the ordinary jurisdiction of the judges of county courts and magistrates respectively by the transfer of petitions and notices or otherwise as such rules may direct. (Act of 1889, s. 88, subs. (4).)

This subsection re-enacts sec. 88, subs. (4) of the Lunacy Act 1889.

The Lord Chancellor.—See definition of cited *ante* p. 198.

A Secretary of State.—In practice the Home Secretary (see *ante* p. 169).

By rules.—See such rules, Appx. *post.*

Magistrate, i.e. a stipendiary or metropolitan police court magistrate (see sec. 341, *post*).

(5) Subject to any rules made under this section, the existing rules shall, so far as applicable, continue in force. (Act of 1889, s. 88, subs. (5).)

This subsection re-enacts sec. 88, subs. (5) of the Lunacy Act 1889.

Subject to, etc.—As to Commissioners' Rules, see subs. (1), *sup.* As to rules by Lord Chancellor, see subss. (2)-(4), *sup.*

The existing rules.—The rules existing at the date of the passing of the Act were as regards the particulars referred to in subs. (1), *sup.*, the Medical Case Book Order, 16th March 1874; as regards other matters, the Lunacy Orders, 1883, the Lunacy Order, February 1889, and the Lunacy Order of 6th May 1889.

(6) All rules made under the provisions of this section shall be laid before Parliament within three weeks after they are made if Parliament is then sitting, and, if Parliament is not then sitting, within three weeks after the beginning of the then next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act. (Act of 1889, s. 88, subs. (7).)

Sec. 338 (7).

This subsection re-enacts sec. 88, subs. (7) of the Lunacy Act 1889.

"Within three weeks."

Within three weeks.—The day of the making of the rules is excluded.[1]

(Act of 1889, s. 88, subs. (8).)

(7) A rule under the provisions of this section shall not come into operation until the expiration of one month after the same has been made and issued.

This subsection re-enacts sec. 88, subs. (8) of the Lunacy Act 1889.

"Until the expiration."

Until the expiration.—The rule cannot come into operation until the expiration of the last day of the month.[2]

"One month."

One month.—"Month" means calendar month (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3).

Forms. (Act of 1889, s. 89.)

339. Subject to rules made under this Act, the forms in the Second Schedule may be used, wherever applicable, with such modifications as circumstances may require, and if used, shall be deemed to be sufficient.

This section re-enacts sec. 89 of the Lunacy Act 1889.

Subject . . . Act.—See sec. 338, subss. (1)-(4), *ante*.

The forms.—See Sched. ii., *post*.

Shall be deemed, i.e. shall be taken conclusively to be (see *ante* p. 138).

Savings as to criminal lunatics, &c. (Act of 1889, s. 90).

340. (1) Save as in this Act otherwise expressly provided, this Act shall not extend to criminal lunatics.

Sec. 133 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), and sec. 90 of the Lunacy Act 1889 contained a similar provision.

Save.—See sec. 116, subs. (1) (*f*), secs. 320, 321, and 324, *ante*; and sec. 10, subs. (3) of the Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64).

Criminal lunatics.—Definition of, sec. 341, *post*.

(Act of 1889, s. 56, subs. (7).) 49 & 50 Vict. c. 25.

(2) This Act shall not affect the provisions of the Idiots Act 1886.

This subsection re-enacts sec. 56, subs. (7) of the Lunacy Act 1889.

The Idiots Act 1886.—See *post*.

[1] *Williams* v. *Burgess*, 1840, 10 L.J. Q.B. 10; *Robinson* v. *Waddington*, 1849, 18 L.J. Q.B. 250.

[2] Cp. *Backhouse* v. *Mellor*, 1859, 28 L.J. Ex. 141.

341. In this Act, if not inconsistent with the context— Sec. 341. Definitions.

"Asylum" means an asylum for lunatics provided by a county or borough, or by a union of counties or boroughs: (Asylum.)

Asylum.—In *Lechmere* v. *Curtler*[1] it was held by Page-Wood, V.-C., that a pauper lunatic asylum is not included in a gift to a humane and charitable institution, inasmuch as if the legacy went to such an asylum it would be in relief of the rates. Pauper asylum not charitable institution.

Lunatics.—See definition of, *post.*

County.—See definition of, *post.*

Borough.—As to asylums provided by counties and boroughs, see Part IX., *ante.*

Union.—Definition of, *post.*

"The Bank" means the Governor and Company of the Bank of England: (Bank.)

The Bank.—As to the Bank, see sec. 136, subs. (5), secs. 137, 145, 299, subs. (2), and sec. 333, *ante.*

The Governor, etc.—The title is derived from 7 Ann. c. 30, sec. 4. "Governor and Company," etc.

"Clerk," in relation to a local authority, means, where the local authority is a county council, the clerk of the council, and where the local authority is a borough council, the town clerk of the borough: (Clerk.)

Local authority.—See definition of, sec. 240, *ante.*

"Commissioners" means the Commissioners in Lunacy: (Commissioners.)

Commissioners in Lunacy.—See secs. 150-62, *ante.*

"Contingent right," as applied to lands, includes a contingent and executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent: (Contingent right.)

This definition is derived from sec. 2 of the Trustee Act 1850 (13 & 14 Vict. c. 60). See now Trustee Act 1893, sec. 50.

Contingent right.—See secs. 135 and 140, *ante.*

Lands.—Definition of, *post.*

[1] 1855, 19 J.P. 709.

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(Convey, conveyance.)

"Convey" and "conveyance" include the performance of all formalities required to the validity of conveyances by married women and tenants in tail under the "Act for the abolition of fines and recoveries, "and for the substitution of more simple modes of "assurance," and also surrenders and other acts which a tenant of copyhold lands can perform preparatory to or in aid of a complete assurance of such copyhold lands:

3 & 4 Will. IV. c. 74.

This definition is derived from sec. 2 of the Trustee Act 1850 (13 & 14 Vict. c. 60). See now Trustee Act 1893, sec. 50.

Convey, etc.—See secs. 135, 140, 141, *ante*.

Married women.—See sec. 7 of Conveyancing Act 1882 (45 & 46 Vict. c. 39).

(County.)

"County," for the purpose of the powers exerciseable by justices of a county, does not include a county of a city or county of a town (except the City of London), but includes any county, riding, division, part or liberty of a county having a separate court of quarter sessions:

County.—The restriction (rendered necessary by the definition of county in the Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 4) in the meaning of county is limited to cases where the term is used for the purpose of the powers exerciseable by justices. As to such powers, see sec. 10 (reception orders), *ante*; sec. 177 (visitors of licensed houses), *ante*; sec. 208 (licensing of houses), *ante*; secs. 287-89 and 291 (orders of settlement, etc.), *ante*.

(County borough.) 51 & 52 Vict. c. 41.

"County borough" has the same meaning as in the Local Government Act 1888:

See note to sec. 240, *ante*.

(Criminal lunatic.) 47 & 48 Vict. c. 64.

"Criminal lunatic" has the same meaning as in the Criminal Lunatics Act 1884:

See sec. 16 of the Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64), *post*.

(District asylum.)

"District asylum" means an asylum provided by two

or more counties in union, or by any county or counties in union with any borough or boroughs : Sec. 341.

As to such asylums, see secs. 242, 248-53, 257, and 267, *ante*.

"Dividends" includes interest and other annual produce : (Dividends.)

This definition is derived from sec. 2 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86).

"Guardians" means guardians appointed under the Poor Law Amendment Act 1834, and the Acts amending the same, and includes guardians or other body of persons performing under any local Act the like functions as guardians under the Poor Law Amendment Act 1834 : (Guardians.) 4 & 5 Will. IV. c. 76

This definition is identical with that of "Board of Guardians" in the Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 16, subs. (1).

"Hospital" means any hospital or part of a hospital or other house or institution (not being an asylum) wherein lunatics are received and supported wholly or partly by voluntary contributions, or by any charitable bequest or gift, or by applying the excess of payments of some patients for or towards the support, provision, or benefit of other patients : (Hospital.)

This definition is derived from sec. 114 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Hospital.—See secs. 230-37, *ante*.

Asylum.—Definition of, *ante*.

Lunatics.—Definition of, *post*.

Received.—As to conditions of reception of lunatics in hospitals, see sec. 230 *et seq.*, *ante*.

Voluntary contributions.—"Voluntary" is not merely the antithesis of "compulsory"; it means "gratuitous."[1] Only a material advantage, however, will prevent a contribution from being gratuitous. The fact that the contributor received a ticket for the admission of a patient to dispose of as he pleased, by virtue of his contribution, would not be a material advantage. Meaning of "voluntary."

[1] *Overseers of the Savoy* v. *Art Union of London*, 1896, 12 Times L.R. 377.

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Meaning of "charitable."

Charitable.—As the Lunacy Act is an English statute,[1] the word "charitable" must be construed according to the legal and technical meaning given to it by English law. So construed, it is not confined to relief from poverty.[2] *Semble*, that the fact that a bequest or gift to a hospital was partly due to the fact that it bore a special denominational or religious character would not prevent it from being "charitable."

(Inquisition.)

"Inquisition" includes an order, certificate, or verdict operating as an inquisition:

Inquisition.—See sec. 90, *ante.*
Order.—See secs. 94 and 100, *ante.*
Certificate.—See secs. 93 and 100, *ante.*
Verdict.—See sec. 94, subs. (1), *ante.*

(Institution for lunatics.)

"Institution for lunatics" means an asylum, hospital, or licensed house:

Asylum.—Definition of, *ante.*
Hospital.—Definition of, *sup.*
Licensed house.—As to, see secs. 207-29, *ante.*

(Justice.)

"Justice" means a justice of the peace:

This definition is derived from sec. 114 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and sec. 132 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

A justice of the peace, i.e. any justice, or the justice indicated by the provisions of the Act, as the case may be.

(Land.)

"Land" includes an undivided share of land:

"Includes."

Includes.—The word "includes" in an interpretation clause means "denotes in addition to its popular meanings."[3]

Land also includes messuages, tenements, and lands, houses and buildings of any tenure (sec. 3, Interpretation Act 1889 (52 & 53 Vict. c. 63)).

(Lease.)

"Lease" includes underlease:

"Includes."

Includes.—See note to corresponding term in definition of "land," *sup.*

(Lunatic.)

"Lunatic" means an idiot or person of unsound mind:

[1] *Commissioners for Special Purposes of Income Tax* v. *Pemsel*, 1891, A.C. 531.
[2] 1894, 2 Q.B., per A. L. Smith, L.J., at p. 631.
[3] Per Brett, L.J., in *Portsmouth Corporation* v. *Smith*, 1883, 13 Q.B.D., at p. 195; and cp. *Dyke* v. *Elliott*, 1872, L.R. 4 P.C., at p. 192.

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This definition is derived from sec. 114 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and sec. 132 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Lunatic—As to meanings of, see *ante* p. 3.

Means.—This term exhausts the definition of "lunatic." See note to "includes," *sup.*

Idiot.—As to meaning of, see *ante* p. 2, and Idiots Act 1886, *post.*

Unsound mind.—As to meaning of, see *ante* p. 4.

Extension of meaning of "unsound mind."

The definition of "unsound mind" is extended by sec. 116, subs. (1) (*d*), (*q.v.*) for the purposes of secs. 116-49 of the Act of 1890.

(Magistrate.)

"Magistrate" means a stipendiary magistrate and any magistrate appointed to act at any of the police courts of the metropolis:

Magistrate.—This definition re-enacts that in sec. 91 of the Lunacy Act 1889.

As to cases in which magistrates may decline to act, see secs. 9 and 338, subs. (4), *ante*, and Rules of Secretary of State 1890, Appx. *post.*

(Manager.)

"Manager" in relation to an institution for lunatics means the superintendent of an asylum, the resident medical officer or superintendent of a hospital, and the resident licensee of a licensed house:

Institution for lunatics.—See definition of, *ante.*

Superintendent of an asylum.—See sec. 276, subs. (1) (*c*), *ante.* Definition of "asylum," *ante.*

Resident medical officer or superintendent.—See sec. 230, *ante.*

Hospital.—See definition of, *sup.*

Resident licensee.—See sec. 211, *ante.*

Licensed house.—As to, see secs. 207-29, *ante.*

(Masters.)

"Masters" means the Masters in Lunacy:

This definition is derived from sec. 2 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Masters.—As to, see secs. 111-14, 166, 167, and 337, *ante.*

(Medical officer.)

"Medical officer" means, in the case of an asylum, the medical superintendent, or if the superintendent is not a medical practitioner the resident medical

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officer of the asylum, in the case of a hospital the superintendent, and in the case of a licensed house the resident medical practitioner, or if none the medical practitioner who visits the house as the medical attendant thereof:

In the case of an asylum, see sec. 276, subs. (1), *ante.* Definition of "asylum," *ante.*

Medical practitioner.—See definition of, *inf.*

Resident medical officer.—See sec. 230, *ante.* Definition of manager, *sup.*

Hospital.—See sec. 230, *ante.* Definition of manager, *sup.*

Licensed house.—See sec. 228, *ante.*

(Medical practitioner.) 21 & 22 Vict. c. 90. 49 & 50 Vict. c. 48.

"Medical practitioner" means a medical practitioner duly registered under the Medical Act 1858, and the Acts amending the same, and the Medical Act 1886:

Evidence of registration.

Section 27 of the Medical Act 1858 (21 & 22 Vict. c. 90) provides that a copy of the medical register for the time being, purporting to be printed and published under the direction of the General Medical Council, "shall be evidence in all courts and before all justices of the peace and others that the persons therein specified are registered according to the provisions of this Act; and the absence of the name of any person from such copy shall be evidence, until the contrary be made to appear, that such person is not registered according to the provisions of this Act: provided always, that in the case of any person whose name does not appear in such copy, a certified copy, under the hand of the registrar of the General Council or of any branch council, of the entry of the name of such person in the general or local register, shall be evidence that such person is registered under the provisions of this Act."

Registration of women.

Provision is made for the registration of women as medical practitioners by the Medical (Qualifications) Act 1876, Russell Gurney's Act (39 & 40 Vict. c. 41).

Acts amending the Medical Act.

And the Acts amending the same.—These are, so far as necessary for the present purpose, the Medical Act 1859 (22 Vict. c. 21), the Medical Acts Amendment Act 1860 (23 Vict. c. 7), the Medical Act 1860 (23 & 24 Vict. c. 66), the Medical Act 1862 (25 & 26 Vict. c. 91), the Medical Act Amendment Act 1868 (31 Vict. c. 29), the Medical Act 1873 (36 & 37 Vict. c. 55), the Medical Act 1875 (38 & 39 Vict. c. 43), the Medical Practitioners Act 1876 (39 and 40 Vict. c. 40), the Medical (Qualifications) Act 1876, Russell Gurney's Act, *v. sup.* (39 & 40 Vict. c. 41), and the Medical Act 1886 (49 & 50 Vict. c. 48).

The Medical Act 1886 provided, *inter alia*, for the registration of colonial and foreign practitioners with recognised diplomas. Tables showing the foreign and colonial degrees entitling to registration are annually inserted in the medical register.

Registration of foreign and colonial practitioners.

"Mortgage" includes every estate, interest, or property in real or personal estate, which is a security for money or money's worth:

(Mortgage.)

This definition is derived from sec. 2 of the Trustee Act 1850 (13 & 14 Vict. c. 60). See now Trustee Act 1893, sec. 50.

Mortgage.—The ordinary meaning of mortgage is a conveyance of freehold, copyhold, or leasehold property, with a proviso for redemption to secure an advance.

Ordinary meaning of.

The word "includes," however (see notes to "land," *sup.*), extends its ordinary meaning for the purposes of this Act.

Extension of ordinary meaning by "includes."

Estate, interest.—The term "estate" includes estates real, and estates personal.[1] *Semble*, these words would cover the goodwill of a business.[2]

Estate, interest.

Property.—The term "property" appears to be used here in its most comprehensive sense as including every possible interest which the party can have.[3] It does not include a "power."[4]

Property.

A security for money.—The term "security for money" has been held to include mortgages,[5] stock in the funds[6] (but not bank stock[5]), policies of assurance,[7] bonds,[8] promissory notes and cheques,[9] but not a bank-note, for it is money,[9] or an I.O.U., for it is only evidence of a debt,[10] or a banker's deposit note,[11] or a mere debt,[12] or shares in a Company,[13] or an unpaid legacy.[12] And see Stroud's *Judicial Dictionary*, p. 710.

"Security for money."

"Next of kin" includes heir-at-law, and the persons entitled under the statutes for the distribution of the estates of intestates:

(Next of kin.)

This definition is derived from sec. 2 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70).

Next of kin.—See cases as to meaning of collected in Stroud's *Judicial Dictionary*, p. 509.

[1] Cp. *Bridgewater* v. *Bolton*, 2 Ann. 6 Mod. 107, per Holt, C.J.

[2] *Pearson* v. *Pearson*, 1884, 27 Ch.D. 145.

[3] Cp. *Jones* v. *Skinner*, 1835, 5 L.J. Ch., at p. 90.

[4] *Re Armstrong*, 1886, 55 L.J. Q.B. 579.

[5] *Ogle* v. *Knipe*, 1869, L.R. 8 Eq. 434.

[6] *Bescoby* v. *Pack*, 1823, 1 Sim. & St. 500.

[7] *Lawrance* v. *Galsworthy*, 1857, 3 Jur., N.S., 1049; *Stokoe* v. *Cowan*, 1861, 9 W.R. 801.

[8] *Dicks* v. *Lambert*, 1799, 4 Ves. 725.

[9] *Barry* v. *Harding*, 1844, 1 J. & Lat. 475.

[10] *Southcot* v. *Watson*, 1745, 3 Atk. 233.

[11] *Hopkins* v. *Abbott*, 1875, L.R. 19 Eq. 222.

[12] *Re Mason*, 1865, 34 L.J. Ch. 603.

[13] *Hudleston* v. *Gouldsbury*, 1847, 10 Beav. 547.

Sec. 341.

"Includes."

Includes.—See note to same word under "land," *sup.*
The statutes, etc.—22 & 23 Car. II. c. 10, 29 Car. II. c. 3.

(Pauper.)

"Pauper" means a person wholly or partly chargeable to a union, county, or borough:

This definition is taken from sec. 114 of the Lunacy Act 1845 (8 & 9 Vict. c. 100), and sec. 132 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97).

Pauper.—As to when lunatic may be treated as pauper, see sec. 18, *ante.*

"Means."

Means.—See note to same word under "lunatic," *sup.*
Chargeable.—See secs. 286-98, *ante.*
Union.—Definition of, *inf.*
County.—Definition of, *sup.*

(Paymaster-General.)

"Paymaster-General" includes the Assistant Paymaster-General for Supreme Court business:

See Supreme Court Funds Rules 1894.

(Prescribed.)

"Prescribed" means prescribed by this Act or by any rules under this Act:

Rules.—As to, see sec. 338, *ante.*

(Private patient.)

"Private patient" means a patient who is not a pauper:

This definition is in substance taken from sec. 114 of the Lunacy Act 1845 (8 & 9 Vict. c. 100).

Private patient.—There is no definition of patient in this Act. See, however, sec. 114 of the Act of 1845, where "patient" was defined as "every person received or detained as a lunatic, or taken care or charge of as a lunatic."

(Property.)

"Property" includes real and personal property, whether in possession, reversion, remainder, contingency, or expectancy, and any estate or interest, and any undivided share therein:

Personal property.—See definition of "stock," *post.*
Contingency.—See definition of "contingent right," *ante.*
Undivided share.—See definition of "land," *ante.*

(Public department.)

"Public department" means the Treasury, the Admiralty, and a Secretary of State, and any other public department of the Government:

Sec. 341.

This definition re-enacts that of sec. 91 of the Lunacy Act 1889.

Public department.—As to pension payable by, see sec. 335, *ante*.

The Treasury.—See definition of cited *ante* p. 190.

Admiralty.

The Admiralty, i.e. the Lord High Admiral of the United Kingdom for the time being, or the Commissioners for the time being for executing the office of Lord High Admiral of the United Kingdom (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 12, subs. (4).

A Secretary of State.—See definition of cited *ante* p. 169.

(Quarter sessions.)

"Quarter Sessions" includes general sessions:

(Quarter sessions borough.)

"Quarter sessions borough" means a borough having a separate court of quarter sessions:

(Reception order.)

"Reception order" means an order or authority made or given before or after the commencement of this Act for the reception of a lunatic, whether a pauper or not, in an institution for lunatics or as a single patient, and includes an urgency order:

The substance of this definition is taken from sec. 91 of the Lunacy Act 1889.

Reception order.—See sec. 4, *ante*.

"Order or authority," scope of.

Order or authority.—A summary reception order (sec. 213-22, *ante*), and an order by two Commissioners under sec. 23, *ante*, or by the Lord Chancellor under sec. 206, subs. (3), *ante*, come within these words.

The commencement of this Act, i.e. 1st May 1890 (see sec. 3, *ante*).

Lunatic.—Definition of, *ante*.

Pauper.—Definition of, *ante*.

Institution for lunatics.—Definition of, *ante*.

Single patient.—As to reception of, see sec. 4, *ante*.

Urgency order.—See sec. 11, *ante*.

(Relative.)

"Relative" means a lineal ancestor or lineal descendant, or a lineal descendant of an ancestor not more remote than great-grandfather or great-grandmother.

This definition also is taken from sec. 91 of the Lunacy Act 1889.

"Relative" means "legitimate relative."

Relative.—See sec. 4, subs. (1), and sec. 5, subs. (1), and notes, *ante*.

"Relative" means "legitimate relative."[1]

[1] Per Stirling, J., *Jodrell* v. *Seale*, 1889, W.N. 230.

Sec. 341.

(Stock.)

"Stock" includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer alone, or by instrument of transfer accompanied by other formalities, and any share or interest therein, and also shares in ships registered under the Merchant Shipping Act 1854:

17 & 18 Vict. c. 104.

The substance of this definition is derived from sec. 2 of the Trustee Act 1850 (13 & 14 Vict. c. 60). See now Trustee Act 1893, sec. 50.

"Stock."

Stock.—Shares in a joint stock bank[1] and in a limited company, whether fully paid up or not,[2] are within this definition; so is stock transferable by deed alone;[3] and see notes to secs. 133, 134, *ante*.

Includes.—See note to same word under "land," *sup.*

"Shares in ships."

Shares in ships.—This provision is borrowed from an amendment of sec. 2 of the Trustee Act 1850, by sec. 10 of the Merchant Shipping Act 1855 (18 & 19 Vict. c. 91).

(Transfer.)

"Transfer" includes assignment, payment, and other disposition, and the execution, and performance, of every assurance and act to complete a transfer:

This definition is taken from sec. 2 of the Trustee Act 1850 (13 & 14 Vict c. 60), and sec. 2 of the Lunacy Regulation Act 1853 (16 & 17 Vict. c. 70). See now Trustee Act 1893, sec. 50.

Includes.—See note to same word under "land," *ante*.

"Payment."

Payment.—The word "payment" is not a technical term.[4] See Stroud's *Judicial Dictionary*, p. 573.

"Assurance."

Assurance.—The term "assurance" means something intended to complete, and capable in law of completing, the transfer.[5]

(Trust, trustee.)

"Trust" and "trustee" include implied and constructive trusts, and cases where the trustee has some beneficial interest, and also the duties incident to the office of personal representative of a deceased person, but not the duties incident to an estate conveyed by way of mortgage:

[1] *Re Angelo*, 1852, 5 De G. & S. 278.

[2] *Re New Zealand Trust and Loan Company*, 1893, 1 Ch. 403. Cp. *re Gregson*, 1893, 3 Ch. 233; *re Price*, 1894, 8 R. 621.

[3] *Re Ives*, 1862, 3 De G. J. & S. 453.

[4] *Maillard* v. *Argyle*, 1843, 6 M. & G. 40.

[5] Cp. *re Roberts*, 1887, 36 Ch.D. 196; *Newlove* v. *Shrewsbury*, 1888, 21 Q.B.D. 41; *Rodger* v. *Harrison*, 1893, 1 Q.B. 161; and cp. Stroud's *Judicial Dictionary*, pp. 57, 58.

Sec. 341.

This definition is derived from sec. 2 of the Trustee Act 1850 (13 & 14 Vict. c. 60). See now Trustee Act 1893, sec. 50.

See *ante* pp. 451 *et seq.*

Scope of "trustee."

The term "trustee" has been held to cover the husband of a female trustee;[1] an heir who has bound himself by election to hold estates under the trusts of a will;[2] a vendor before completion;[3] an equitable mortgagor;[4] a vendor who after conveying the equitable estate became seised of the legal estate and died without an heir;[5] trustees of a trust deed registered under the Bankruptcy Acts;[6] trustees and assignees in bankruptcy;[7] a trustee by implication;[8] an infant who is sole beneficial owner subject to a direction in regard to maintenance vested in another;[9] an executor;[10] and a settler who covenanted to settle in a marriage settlement if the marriage is solemnised and the case becomes one of executed contract.[11]

(Union.)

"Union" means any parish or union of parishes for which there is a separate board of guardians:

This definition is taken from sec. 132 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97), and sec. 91 of the Lunacy Act 1889.

Guardians.—Definition of, *ante.*

(Visiting committee.)

"Visiting committee" means a committee of visitors of an asylum appointed under this Act:

Visiting committee.—As to appointment and duties of, see secs. 169-76, *ante.*

Asylum.—Definition of, *ante.*

[1] Cp. *ex parte Bradshaw*, 1852, 2 De G. M. & G. 900; and *re Wood*, 1861, 3 De G. F. & J. 125, where the committee was allowed his costs out of the trust fund.

[2] *Dewar* v. *Maitland*, 1866, L.R. 2 Eq. 834.

[3] *Re Angelo*, 1852, 5 De G. & S. 278. *Semble*, that a decree is necessary where the contract is disputed. Cp. *re Burt*, 1851, 9 Ha. 289; *Collinson* v. *Collinson*, 1853, 3 De G. M. & G., at p. 414; *re De Visme*, 1864, 9 L.T., N.S., 668. *Aliter*, where the contract is not disputed (*re Angelo, ubi sup.*). Where a contract for sale has not, however, been completed in the lifetime of the lunatic, he cannot at his death be considered a trustee within the Act (*re Colling*, 1886, 32 Ch.D. 332; *re Cuming*, 1869, L.R. 5 Ch. 72). And cp. on this subject *Jackson* v. *Milfield*, 1847, 5 Ha. 538; *re Burt*, 1851, 9 Ha. 289; *re Weeding's Estates*, 1858, 4 Jur., N.S., 707; *Cust* v. *Middleton*, 1861, 7 Jur., N.S., 151; *re Carpenter*, 1853, Kay 418; *re Collingwood*, 1857, 6 W.R. 536; *Steele* v. *Waller*, 1860, 28 Beav. 466.

[4] *Re Rogers*, 1844, 13 L.J., N.S., Ch. 262.

[5] *Re Wilkinson's Trust*, 1864, 10 Jur., N.S., 716; and cp. *re Groom's Trust Estate*, 1864, 11 L.T., N.S., 336.

[6] *Re Price's Trust Deed*, 1868, L.R. 6 Eq. 460; *re Donisthorpe*, 1874, L.R. 10 Ch. 55.

[7] *Re Joyce's Estate*, 1867, 12 Jur., N.S., 1015; *re Raphael's Trust Estate*, 1870, L.R. 9 Eq. 233.

[8] *Re Boyce*, 1864, 10 Jur., N.S., 138.

[9] *Gardner* v. *Cowles*, 3 Ch.D. 304; *re Findlay*, 32 Ch.D. 641.

[10] *Re Moore*, 1882, 21 Ch.D. 778.

[11] *Re Bradley's Settled Estate*, 1885, 34 W.R. 148. In *re Lowry's Will*, 1872, L.R. 15 Eq. 78, where the owner of lands agreed to sell to a railway company land which they had statutory power to take, and died, having devised his real estate to an infant, Lord Romilly, M.R., held that the infant devisee was a trustee, and made a vesting order on petition. And cp. *re Russell's Estate*, 1866, 12 Jur., N.S., 224; but this was questioned in *re Colling, sup.*

Sec. 341. (Workhouse.) 30 Vict. c. 6.

"Workhouse" includes an asylum provided for reception and relief of the insane under the Metropolitan Poor Act 1867, and the managers of every such asylum shall exercise the powers and perform the duties by this Act conferred and imposed upon the guardians of the union to which a workhouse belongs.

This definition is derived from the first part of sec. 21, subs. (10) of the Lunacy Act 1889, and the last part of sec. 30 of the Metropolitan Poor Act 1867 (30 Vict. c. 6).

Repeal.

342. The Acts mentioned in the Fifth Schedule are hereby repealed to the extent set forth in the third column of the same schedule.

Provided that this repeal shall not affect any jurisdiction or practice established, confirmed, or transferred, or salary or compensation or superannuation secured, by or under any enactment repealed by this Act.

The Acts.—See *post.*

Any jurisdiction.—The jurisdiction of justices appointed under the Lunacy Act 1889 was preserved by this saving.[1]

Repealed.—Sections 11 and 28 of the Interpretation Act 1889 (52 & 53 Vict. c. 63) are of importance in this connection.

Effect of repeal in Acts passed since 1850.

11. (1) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals a repealing enactment, it shall not be construed as reviving any enactment previously repealed, unless words are added reviving that enactment.

(2) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals wholly or partially any former enactment and substitutes provisions for the enactment repealed, the repealed enactment shall remain in force until the substituted provisions come into operation.

Effect of repeal in future Acts.

38. (1) Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

[1] Cp. 54 J.P. 606.

Sec. 342.

(2) Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

(*a*) Revive anything not in force or existing at the time at which the repeal takes effect; or,

(*b*) Affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(*c*) Affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or

(*d*) Affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or

(*e*) Affect any investigation, legal proceeding, or remedy, in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

And any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed.

SCHEDULES.

THE FIRST SCHEDULE.

Section 111, *ante.*

Declaration to be made by a Master.

I, , declare that I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the powers and trusts committed to me as one of the Masters in Lunacy, and that without favour or affection, prejudice or malice.

Section 151, *ante.*

Declaration to be made by a Commissioner.

I, , declare that I will discreetly, impartially, and faithfully execute all the powers and trusts committed to me as one of the Commissioners in Lunacy, and that I will keep secret all such matters as come to my knowledge in the execution of my office (except when required to divulge the same by legal authority, or so far as I feel myself called upon to do so for the better execution of my duties).

Section 157, *ante.*

Declaration to be made by the Secretary and Clerks of the Commissioners.

I, , declare that I will faithfully execute all the trusts and duties committed to me as secretary of the Commissioners in Lunacy [*or*, as clerk of the Commissioners in Lunacy], and that I will keep secret all such matters as come to my knowledge in the execution of my office (except when required to divulge the same by legal authority).

Section 179, *ante.*

Declarations to be made by Assistants to the Clerk of the Visitors.

I, , declare that I will faithfully keep secret all matters and things which come to my knowledge in consequence of my employment as assistant to the clerk of the visitors of licensed houses appointed for the county [*or* borough] of
unless required to divulge the same by legal authority.

THE SECOND SCHEDULE.

FORM 1.

Petition for an Order for Reception of a Private Patient.

Section 339, *ante*.

In the matter of *A.B.* a person alleged to be of unsound mind.

Sections 4, 5, *ante*.

To a justice of the peace for

[*or*

To His Honour the judge of the county court of *or* To stipendiary magistrate for].

The petition of *C.D.* of [1] in the county of .

1. I am [2] years of age.

2. I desire to obtain an order for the reception of *A.B.* as a lunatic [3] in the asylum [*or* hospital *or* house *as the case may be*] of situate at [4]

3. I last saw the said *A.B.* at on the [5] day of

4. I am the [6] of the said *A.B.* [*or if the petitioner is not connected with or related to the patient state as follows:*]

I am not related to or connected with the said *A.B.* The reasons why this petition is not presented by a relation or connection are as follows: [*State them.*]

The circumstances under which this petition is presented by me are as follows: [*State them.*]

5. I am not related to or connected with either of the persons signing the certificates which accompany this petition as (*where the petitioner is a man*) husband, father, father-in-law, son, son-in-law, brother, brother-in-law, partner, or assistant (*or where the petitioner is a woman*), wife, mother, mother-in-law, daughter, daughter-in-law, sister, sister-in-law, partner, or assistant.

6. I undertake to visit the said *A.B.* personally or by some one specially appointed by me at least once in every six months while under care and treatment under the order to be made on this petition.

7. A statement of particulars relating to the said A.B. accompanies this petition.

If it is the fact add:

8. The said *A.B.* has been received in the asylum [*or* hospital *or* house *as the case may be*] under an urgency order dated the

The petitioner therefore prays that an order may be made in accordance with the foregoing statement.

(Signed)

full Christian and surname.

Dated

Date of presentation of the petition

Substituted by Act of 1891, s. 23.

[1] Full postal address and rank, profession, or occupation.

[2] At least twenty-one.

[3] Or an idiot or person of unsound mind.

[4] Insert a full description of the name and locality of the asylum, hospital, or licensed house, or the full name, address, and description of the person who is to take charge of the patient as a single patient.

[5] Some day within 14 days before the date of the presentation of the petition.

[6] Here state the connection or relationship with the patient.

Secs. 4, 5, 11, *ante.*

FORM 2.

Statement of Particulars.

STATEMENT of particulars referred to in the annexed petition [or in the above or annexed order].

The following is a statement of particulars relating to the said *A.B.* [1]:—

Name of patient, with Christian name at length.

Sex and age.

†Married, single, or widowed.

†Rank, profession, or previous occupation (if any).

†Religious persuasion.

Residence at or immediately previous to the date hereof.

†Whether first attack.

Age on first attack.

When and where previously under care and treatment as a lunatic, idiot, or person of unsound mind.

†Duration of existing attack.

Supposed cause.

Whether subject to epilepsy.

Whether suicidal.

Whether dangerous to others, and in what way.

Whether any near relative has been afflicted with insanity.

Names, Christian names, and full postal addresses of one or more relatives of the patient.

Name of the person to whom notice of death to be sent, and full postal address if not already given.

Name and full postal address of the usual medical attendant of the patient.

[1] If any particulars are not known, the fact is to be so stated. [Where the patient is in the petition or order described as an idiot, omit the particulars marked†.]

(Signed)

When the petitioner or person signing an urgency order is not the person who signs the statement, add the following particulars concerning the person who signs the statement.

Name with Christian name at length.
Rank, profession, or occupation (if any).
How related to or otherwise connected with the patient.

FORM 3.

Order for Reception of a Private Patient to be made by a Justice appointed under the Lunacy Act 1890, *Judge of County Courts, or Stipendiary Magistrate.*

Section 6, *ante.*

I, the undersigned *E.F.*, being a justice for specially appointed under the Lunacy Act 1890 [*or* the judge of the county court of *or* the stipendiary magistrate for] upon the petition of *C.D.*, of [1] in the matter of *A.B.* a lunatic, [2] accompanied by the medical certificates of *G.H.* and *I.J.* hereto annexed, and upon the undertaking of the said *C.D.* to visit the said *A.B.* personally or by some one specially appointed by the said *C.D.* once at least in every six months while under care and treatment under this order, hereby authorise you to receive the said *A.B.* as a patient into your asylum [3]. And I declare that I have [*or* have not] personally seen the said *A.B.* before making this order.

Dated

(Signed) *E.F.*

A justice for appointed under the above-mentioned Act [*or* the judge of the county court of , *or* a stipendiary magistrate.]

To [4]

[1] Address and description.

[2] Or an idiot or person of unsound mind.

[3] Or hospital or house or as a single patient.

[4] To be addressed to the medical superintendent of the asylum or hospital, or to the resident licensee of the house in which the patient is to be placed.

FORM 4.

Section 11, *ante*.

Form of Urgency Order for the Reception of a Private Patient.

I, the undersigned, being a person twenty-one years of age, hereby authorise you to receive as a patient into your house [1] *A.B.*, as a lunatic [2], whom I last saw at on the [3] day of 18 . I am not related to or connected with the person signing the certificate which accompanies this order in any of the ways mentioned in the margin [4]. Subjoined [or annexed] hereto [5] is a statement of particulars relating to the said *A.B.*

[1] Or hospital or asylum or as a single patient.
[2] Or an idiot or a person of unsound mind.
[3] Some day within two days before the date of the order.
[4] Husband, wife, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law, partner, or assistant.
[5] See Form 2.

(Signed) Name and Christian name at length.
Rank, profession, or occupation (if any).
Full postal address.
How related to or connected with the patient.
[If not the husband or wife or a relative of the patient, the person signing to state as briefly as possible: (1) Why the order is not signed by the husband or wife or a relative of the patient. (2) His or her connection with the patient, and the circumstances under which he or she signs.]

Dated this day of 18 .

To superintendent of the asylum
[hospital *or* resident licensee of the house].

Describing the asylum, hospital, or house by situation and name.

FORM 5.

Section 8, *ante*

Certificate as to Personal Interview after Reception.

I certify that it would be prejudicial to *A.B.* to be taken before or visited by a justice, a judge of county courts, or magistrate.

(Signed) *C.D.*,
Medical superintendent of the asylum *or* hospital *or* resident medical practitioner *or* attendant of the , *or* medical attendant of the said *A.B.*

FORM 6.

Section 8, *ante*.

Notice of Right to Personal Interview.

Take notice that you have the right, if you desire it, to be taken before or visited by a justice, judge of county courts, or magistrate. If you desire to

exercise such right, you must give me notice thereof by signing the enclosed form on or before the day of

Dated

(Signed) *C.D.*
Superintendent of the asylum *or* hospital *or* resident licensee of [*or as the case may be*].

Section 8, *ante.*

FORM 7.

Notice of Desire to have a Personal Interview.

Dated

[*Address*]

I desire to be taken before or visited by a justice, judge, or magistrate having jurisdiction in the district within which I am detained.

(Signed)

Secs. 4, 11, 16, 23, 24, *ante.*

FORM 8.

Certificate of Medical Practitioner.

In the matter of *A.B.* of [1] in the county [2] of [3], an alleged lunatic.

I, the undersigned *C.D.*, do hereby certify as follows :—

1. I am a person registered under the Medical Act 1858, and I am in the actual practice of the medical profession.

2. On the day of 18 , at [4] in the county [5] of [separately from any other practitioner [6]], I personally examined the said *A.B.* and came to the conclusion that he is a [lunatic, an idiot, or a person of unsound mind] and a proper person to be taken charge of and detained under care and treatment.

3. I formed this conclusion on the following grounds, viz. :—

[1] Insert residence of patient.
[2] City or borough, as the case may be.
[3] Insert profession or occupation, if any.
[4] Insert the place of examination, giving the name of the street, with number or name of house, or should there be no number the Christian and surname of occupier.
[5] City or borough, as the case may be.
[6] Omit this where only one certificate is required.

(*a*) Facts indicating insanity observed by myself at the time of examination [7], viz. :—

(*b*) Facts communicated by others, viz. :—[8]

[*If an urgency certificate is required it must be added here.* *See* Form 9.]

4. The said *A.B.* appeared to me to be [*or* not to be] in a fit condition of bodily health to be removed to an asylum, hospital, or licensed house[9].

5. I give this certificate having first read the section of the Act of Parliament printed below.

Dated (Signed) *C.D.*, of [10]

[7] If the same or other facts were observed previous to the time of the examination, the certifier is at liberty to subjoin them in a separate paragraph.

[8] The names and Christian names (if known) of informants to be given, with their addresses and descriptions.

[9] Strike out this clause in case of a private patient whose removal is not proposed.

[10] Insert full postal address.

Extract from Section 317 *of the Lunacy Act* 1890, *ante.*

Any person who makes a wilful misstatement of any material fact in any medical or other certificate or in any statement or report of bodily or mental condition under this Act, shall be guilty of a misdemeanour.

FORM 9.

Secs. 11, 28, *ante.*

Statement accompanying Urgency Order.

I certify that it is expedient for the welfare of the said *A.B.* [*or* for the public safety, *as the case may be*] that the said *A.B.* should be forthwith placed under care and treatment.

My reasons for this conclusion are as follows : [*State them.*]

FORM 10.

Section 24, *ante.*

Certificate as to Pauper Lunatic in a Workhouse.

I, the undersigned medical officer of workhouse of the union hereby certify that I have carefully examined into the state of health and mental condition of *A.B.*, a pauper in the said workhouse, and that he is in my opinion a lunatic, and a proper person to be allowed to remain in the workhouse as a lunatic, and that the accommodation in the workhouse is sufficient for his proper care and treatment separate from the inmates of the workhouse not lunatics [*or*, that his condition is

such that it is not necessary for the convenience of the lunatic or of the other inmates that he should be kept separate].

The grounds for my opinion that the said *A.B.* is a lunatic are as follows:

Dated

(Signed)
Medical officer of the workhouse.

Section 24, *ante.*

FORM 11.

Order for Detention of Lunatic in Workhouse.

I, the undersigned *C.D.*, a justice of the peace for being satisfied that *A.B.*, a pauper in the workhouse of the is a lunatic [or idiot or person of unsound mind] and a proper person to be taken charge of under care and treatment in the workhouse, and being satisfied that the accommodation in the workhouse is sufficient for his proper care and treatment separate from the inmates of the workhouse not lunatics [*or*, that his condition is such that it is not necessary for the convenience of the lunatic or of the other inmates that he should be kept separate], hereby authorise you to take charge of, and, if the workhouse medical officer shall certify it to be necessary, to detain the said *A.B.* as a patient in your workhouse. Subjoined is a statement of particulars respecting the said *A.B.*

(Signed) *C.D.*,
A justice of the peace
for

Dated
To the master of the
workhouse
of the

Statement of Particulars.

Name of patient and Christian name at length.
Sex and age.
Married, single, or widowed.
Condition of life and previous occupation (if any).
Religious persuasion as far as known.
Previous place of abode.
Whether first attack.
Age (if known) on first attack.
When and where previously under care and treatment.
Duration of existing attack.
Supposed cause.
Whether subject to epilepsy.
Whether suicidal.
Whether dangerous to others.
Whether any near relative has been afflicted with insanity.
Name and Christian name and address of nearest known relative of the patient and degree of relationship if known.

I certify that to the best of my knowledge the above particulars are correct.

[To be signed by the relieving officer.]

FORM 12.

Section 16, *ante*.

Order for Reception of a Pauper Lunatic or Lunatic wandering at large.

I, *C.D.*, having called to my assistance *E.F.* of , a duly qualified medical practitioner, and being satisfied that *A.B.* [*describing him*] is a pauper in receipt of relief [*or* in such circumstances as to require relief for his proper care and maintenance], and that the said *A.B.* is a lunatic [*or* an idiot, *or* a person of unsound mind] and a proper person to be taken charge of and detained under care and treatment, *or* that *A.B.* [*describing him*] is a lunatic, and was wandering at large, and is a proper person to be taken charge of and detained under care and treatment, hereby direct you to receive the said *A.B.* as a patient into your asylum [*or* hospital, *or* house]. Subjoined is a statement of particulars respecting the said *A.B.*

(Signed) *C.D.*,
A justice of peace for

Dated the day of one thousand eight hundred and

To the superintendent of the asylum for the county [*or* borough] of [*or* the lunatic hospital of ; *or E.F.* proprietor of the licensed house of ; describing the asylum, hospital, or house].

Note.—Where the order directs the lunatic to be received into any asylum, other than an asylum of the county or borough in which the parish or place from which the lunatic is sent is situate, or into a registered hospital or licensed house, it shall state, that the justice making the order is satisfied that there is no asylum of such county or borough, or that there is a deficiency of room in such asylum; or (as the case may be) the special circumstances by reason whereof the lunatic cannot conveniently be taken to an asylum for such first-mentioned county or borough.

Statement of Particulars.

STATEMENT of particulars referred to in the above or annexed order.

The following is a statement of particulars relating to the said *A.B.*[1]:—

Name of patient, with Christian name at length.
Sex and age.
†Married, single, or widowed.
†Rank, profession, or previous occupation (if any).
†Religious persuasion.
Residence at or immediately previous to the date hereof.
†Whether first attack.
Age on first attack.
When and where previously under care and treatment as a lunatic, idiot, or person of unsound mind.
†Duration of existing attack.
Supposed cause.
Whether subject to epilepsy.
Whether suicidal.
Whether dangerous to others, and in what way.
Whether any near relative has been afflicted with insanity.
Union to which lunatic is chargeable.
Names, Christian names, and full postal addresses of one or more relatives of the patient.

[1] If any particulars are not known, the fact is to be so stated. [Where the patient is in the order described as an idiot, omit the particulars marked †.]

Name of person to whom notice of death to be sent, and full postal address if not already given.

(Signed) *G.H.*

To be signed by the relieving officer or overseer.

Section 38, *ante.*

FORM 13.[1]

Certificate that Patient continues of unsound mind.

I, , certify that *A.B.*, the patient [*or A.B.*, *C.D.*, &c., the patients] to whom the annexed report relates, is [*or* are] still of unsound mind, and a proper person [*or* proper persons] to be detained under care and treatment.

(Signed)
Medical superintendent *or* resident medical officer of the asylum, *or* superintendent of the hospital *or* resident medical practitioner *or* medical attendant of the house situate at , *or* medical practitioner visiting the said *A.B.*

Dated

Section 229, *ante.*

FORM 14.

Consent to the Admission of a Boarder.

We hereby sanction the admission of *A.B.* as a boarder into for the term of from the day of in accordance with the provisions of the statute and in terms of *A.B.'s* application.

(Signed)
Two of the Commissioners in Lunacy.
[*or* Two of the justices for

Dated the day of 18 .

Section 13, *ante.*

FORM 15.

Order for Reception of a Lunatic not under proper care and control, or cruelly treated or neglected, to be made by a Justice appointed under the Lunacy Act 1890.

I, the undersigned *C.D.*, being a justice for specially appointed under the Lunacy Act 1890, having caused *A.B.* to be examined by two duly qualified medical practitioners, and being satisfied that the said *A.B.* is a lunatic not under proper care and control [*or* is cruelly treated or neglected by the person having the care or charge of him], and that he is a proper person to be taken charge of and detained under care and treatment, hereby direct you to receive the said *A.B.* as a patient into your asylum [*or*

[1] Repealed by Sched. Lunacy Act 1891, *post.*

hospital *or* house]. Subjoined is a statement of particulars respecting the said *A.B.*

(Signed)
A justice of the peace for
appointed under the above-mentioned Act.

Dated

To the Superintendent of the Asylum for , or of the lunatic hospital of , or the resident licensee of the licensed house at .

Note.—Where the order directs the lunatic to be received into any asylum, other than an asylum of the county or borough in which the parish or place from which the lunatic is sent is situate, or into a registered hospital or licensed house, it shall state, that the justice making the order is satisfied that there is no asylum of such county or borough, or that there is a deficiency of room in such asylum; or (as the case may be) the special circumstances, by reason whereof the lunatic cannot conveniently be taken to an asylum for such first-mentioned county or borough.

Statement of Particulars.

STATEMENT of particulars referred to in the above or annexed order.

The following is a statement of particulars relating to the said *A.B.* [1]:—

Name of patient, with Christian name at length.
Sex and age.
†Married, single, or widowed.
†Rank, profession, or previous occupation (if any).
†Religious persuasion.
Residence at or immediately previous to the date hereof.
†Whether first attack.
Age on first attack.
When and where previously under care and treatment as a lunatic, idiot, or person of unsound mind.
†Duration of existing attack.
Supposed cause.
Whether subject to epilepsy.
Whether suicidal.
Whether dangerous to others, and in what way.
Whether any near relative has been afflicted with insanity.
Union to which lunatic is chargeable.
Names, Christian names, and full postal addresses of one or more relatives of the patient.
Name of the person to whom notice of death to be sent, and full postal address if not already given.

[1] If any particulars are not known, the fact is to be so stated. [Where the patient is in the order described as an idiot, omit the particulars marked†.]

(Signed)]

To be signed by the relieving officer, overseer, or other person on whose information the order is made.

Section 335, *ante.*

FORM 16.

Certificate of Disability of Person entitled to Payments from a Public Department.

I, , being a justice of the peace for *or* the rector, *or* vicar, *or* minister [*state the denomination and residence*], hereby certify that I know the said *A.B.*, and that I believe him *or* her to be unable, by reason of mental disability, to manage his *or* her affairs; and I further certify that I believe the family of the said *A.B.* to consist of

Dated .

Signed [*Name*].

[*Place of Abode*].

Section 335, *ante.*

FORM 17.

Medical Certificate of Disability of Person entitled to Payments from a Public Department.

I, , being a person registered under the Medical Act 1858, and in the actual practice of my profession, hereby certify that I have this day visited and personally examined *A.B.*, and that the said *A.B.* is unable by reason of mental disability to manage his *or* her affairs, and that I have formed this conclusion on the following grounds, viz.: [*State them*].

Dated

Signed [*Name*].

[*Postal Address in full*].

Section 207, *ante.*

FORM 18.

Form of Licence by Commissioners for a House not previously licensed.

KNOW ALL MEN, that we, the Commissioners in Lunacy, do hereby certify that *A.B.* of in the parish of in the county of has delivered to us a plan and description of a house and premises situate at in the county of proposed to be licensed for the reception of lunatics, and we, having considered and approved the same, do hereby authorise the said *A.B.* (he undertaking to reside therein) to use the said house and premises for the reception of male [*or* female, *or* male and female] lunatics, of whom not more than shall be private patients, for calendar months from this date.

Sealed with our common seal this day of 18 .

Witness,

Y.Z., Secretary to the Commissioners in Lunacy.

Section 207, *ante.*

FORM 19.

Form of Licence by Justices for a House not previously licensed.

KNOW ALL MEN, that we, the undersigned justices of the peace, acting in and for in general [*or* quarter *or* special] sessions assembled, do hereby certify that *A.B.* of in the parish of in the county of has delivered to the clerk of the peace a plan and

description of a house and premises, situate at in the county of proposed to be licensed for the reception of lunatics, and has applied to us for a licence thereof: And whereas the Commissioners in Lunacy have reported upon the said application, and their report has been received, and has been taken into consideration by us; Now we, having considered and approved the application, do hereby authorise the said *A.B.* (he undertaking to reside therein) to use the said house and premises for the reception of male [*or* female *or* male and female] lunatics, of whom not more than shall be private patients for the space of calendar months from this date.

Given under our hands and seals this day of 18

Witness, *Y.Z., Clerk of the Peace.*

FORM 20. Section 207, *ante.*

Licence by Commissioners or Justices for a House previously licensed.

KNOW ALL MEN, that we, the Commissioners in Lunacy [*or* we the undersigned justices of the peace, for in general (*or* quarter *or* special) sessions assembled] do hereby certify that *A.B.* of in the parish of in the county of has delivered to us [*or* the clerk of the peace] a list of the number of patients now detained in a house and premises situate at in the county of licensed on the day of for the reception of lunatics, and we, having considered the same, do hereby authorise the said *A.B.*, he undertaking to reside therein, to use the said house and premises for the reception of male [*or* female *or* male and female] lunatics, of whom not more than shall be private patients, for calendar months from this date.

Sealed with our common seal [*or* given under our hands and seals], this day of

Witness,

Y.Z., Secretary to the Commissioners in Lunacy,
[*or* Clerk of the Peace.]

FORM 21. Section 248, *ante.*

Form of Agreement for uniting for the purpose of erecting or providing an Asylum for the Reception of Lunatics.

It is agreed this day of between the visiting committees for the county of and the borough of [*as the case may be*], that the said county and borough [*as the case may be*], shall henceforth be united for the purposes of the Lunacy Act 1890; and that an asylum for the reception of lunatics, with all necessary buildings, courts, yards, and outlets, shall be immediately provided and properly fitted up and accommodated for the purposes mentioned in the said Act; and that the necessary expenses attending the providing, building, fitting up, repairs, and maintenance of the said asylum shall be defrayed by the said county and borough, so united, in the following proportions, such proportions being fixed according to the probable extent of the accommoda-

tion required for the lunatics of the contracting county and borough; (that is to say),

The county of	Five-ninths of the said expenses.
The borough of	Four-ninths of the same.

[*as the case may be, or if the expenses are not fixed with reference to the probable extent of the accommodation, insert instead of the last clause*].

The expenses shall be from time to time charged upon and raised by such county and borough in proportion to their respective populations as stated in the last return for the time being made of the same under the authority of Parliament.

And it is further agreed, that the committee of visitors to superintend the building, erection, and management of the said asylum shall be appointed in the following proportions; the council for the said county of shall appoint* and the council for the borough of shall appoint* and the proportions in which the said committee of visitors are to be appointed as aforesaid may be from time to time varied, with the consent in writing under the hands of the greater number of visitors of the said county and borough, and with the consent of the Commissioners in Lunacy. And hereunto, we, the undersigned, being the majority of each of the committees appointed by the said councils respectively, do on behalf of the said councils set our hands and seals, this day of .

* Insert in these blanks either the number or the proportion of visitors: and where the number of the committee of visitors is not fixed in the agreement, but only the proportions, a provision shall be made by the agreement for fixing from time to time the number of such committee.

Section 332, *ante*.

FORM 22.

Form of Summons.

We, the Commissioners in Lunacy [*or* we whose names are hereunto set and seals affixed, being two of the Commissioners in Lunacy, *or* visitors of], do hereby summon you personally to appear before us at in the parish of in the county of on next the day of at the hour of in the noon of the same day, and then and there to be examined, and to testify the truth touching certain matters relating to the execution of the Lunacy Act 1890.

Sealed with the common seal of "The Commissioners in Lunacy" [*or* Given under our hands and seals] this day of .

Section 208, *ante*.

THE THIRD SCHEDULE.

PLACES WITHIN IMMEDIATE JURISDICTION OF COMMISSIONERS.

The cities of London and Westminster, the counties of London and Middlesex, and the following parishes and places; (that is to say), Barnes, Kew Green, Mortlake, Merton, Mitcham, and Wimbledon, in the county of Surrey; Southend, in the county of Kent; and East Ham, Leyton, Leytonstone, Low Leyton, Plaistow, West Ham, and Walthamstow, in the county of Essex; and also every other place, if any, within the distance of seven miles from any part of the cities of London or Westminster, or of the borough of Southwark.

THE FOURTH SCHEDULE.

Secs. 169, 240, 245, 246, *ante.*

BOROUGHS THE COUNCILS OF WHICH ARE LOCAL AUTHORITIES UNDER THIS ACT.

Barnstaple.	*Maidstone.*[1]
Bedford.	Newark.
Berwick-on-Tweed.	Newbury.
Bridgwater.	Newcastle-under-Lyme.
Bury St. Edmunds.	New Sarum.
Cambridge.	New Windsor.
Colchester.	Penzance.
Doncaster.	Poole.
Dover.[1]	Rochester.
Grantham.	Scarborough.
Gravesend.	Shrewsbury.
Guildford.	Tiverton.
Hereford.	Warwick.
Kings Lynn.	Wenlock.
London (City of).	Winchester.

[1] Repealed by Sched. Lunacy Act 1891, *post.*

THE FIFTH SCHEDULE.

Section 342, *ante.*

Session and Chapter.	Title or Short Title.	Extent of Repeal.
4 & 5 Will. IV. c. 76 .	An Act for the amendment and better administration of the laws relating to the poor in England and Wales	Section forty-five.
8 & 9 Vict. c. 100 .	An Act for the regulation of the care and treatment of lunatics	The whole Act.
13 & 14 Vict. c. 60 .	The Trustee Act 1850	Sections three, four, five, six, and fifty-six. Sections twenty, twenty-six, twenty-seven, twenty-eight, thirty-one, forty, forty-one, forty-two, forty-four, forty-five, fifty-one, fifty-two, and fifty-three, so far as they relate to "the Lord Chancellor entrusted as aforesaid." Except so far as the above sections relate to Ireland.[1]
15 & 16 Vict. c. 48 .	An Act for the amendment of the law respecting the property of lunatics	The whole Act.

[1] Except as regards Ireland, the whole of the Trustee Act 1850 is now repealed by the Trustee Act 1893 (56 & 57 Vict. c. 53).

Session and Chapter.	Title or Short Title.	Extent of Repeal.
15 & 16 Vict. c. 55 .	An Act to extend the provisions of the Trustee Act 1850	Sections six and seven, so far as relates to the Lord Chancellor entrusted as aforesaid, and sections ten and eleven. Except so far as the above sections relate to Ireland.[1]
16 & 17 Vict. c. 70 .	The Lunacy Regulation Act 1853	The whole Act.
16 & 17 Vict. c. 96 .	An Act to amend an Act passed in the ninth year of Her Majesty for the regulation of the care and treatment of lunatics	The whole Act.
16 & 17 Vict. c. 97 .	The Lunatic Asylums Act 1853	The whole Act.
18 Vict. c. 13 . .	An Act to amend and explain the Lunacy Regulation Act 1853	The whole Act.
18 & 19 Vict. c. 105 .	An Act to amend the Lunatic Asylums Act 1853, and the Acts passed in the ninth and seventeenth years of Her Majesty for the regulation of the care and treatment of lunatics	The whole Act.
19 & 20 Vict. c. 87 .	An Act to amend the Lunatic Asylums Act 1853	The whole Act.
23 & 24 Vict. c. 127 .	An Act to amend the law relating to attorneys, solicitors, proctors, and certificated conveyancers	Section twenty-nine.
24 & 25 Vict. c. 55 .	An Act to amend the laws regarding the removal of the poor, and the contribution of parishes to the common fund in unions	Section seven.
25 & 26 Vict. c. 86 .	The Lunacy Regulation Act 1862	The whole Act.
25 & 26 Vict. c. 111 .	The Lunacy Acts Amendment Act 1862	The whole Act.
26 & 27 Vict. c. 110 .	The Lunacy Acts Amendment Act 1863	The whole Act.
28 & 29 Vict. c. 80 .	The Lunacy Act Amendment Act 1865	The whole Act.
30 Vict. c. 6 . .	The Metropolitan Poor Act 1867	In section thirty, the words "and every such asylum" to the end of the section.
30 & 31 Vict. c. 87 .	The Court of Chancery (Officers) Act 1867	Section thirteen.
30 & 31 Vict. c. 106 .	The Poor Law Amendment Act 1867	Section twenty-two, except as regards persons suffering from delirium tremens, or from bodily disease of a contagious or infectious character.
31 & 32 Vict. c. 122 .	The Poor Law Amendment Act 1868	Section forty-three.

[1] See note to Fifth Sched., p. 735.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
34 & 35 Vict. c. 11 .	The County Property Act 1871	Section two.
38 & 39 Vict. c. 77 .	The Supreme Court of Judicature Act 1875	Section seven. In section twenty-six, the words "(including the percentage on estates of lunatics)" and the words "(including the Masters and other officers in lunacy)."
45 & 46 Vict. c. 82 .	The Lunacy Regulation Amendment Act 1882	The whole Act.
48 & 49 Vict. c. 52 .	The Lunacy Acts Amendment Act 1885	The whole Act.
51 & 52 Vict. c. 41 .	The Local Government Act 1888	Section thirty-two, subsection three, sub-clause (*c*); section eighty-six, subsections one, two, three, four, six, seven, and eight.
52 & 53 Vict. c. 41 .	The Lunacy Acts Amendment Act 1889	The whole Act.

RULES OF THE COMMISSIONERS IN LUNACY 1895.

RULES, DATED 26TH JUNE 1895, MADE BY THE COMMISSIONERS IN LUNACY, WITH THE APPROVAL OF THE LORD CHANCELLOR.[1]

The Lunacy Acts 1890-91.

Rule 1 (1).

Books to be kept. R.C. 1890 r. 1 (1).

1. (1) There shall be kept in every institution for lunatics—

(*a*) A visitors' book.
(*b*) A register of patients.
(*c*) A register of removals, discharges, and deaths.
(*d*) A medical journal.
(*e*) A register of mechanical restraint.
(*f*) A medical case book for patients.
(*g*) A post-mortem book.

Institution for lunatics.—Definition of, sec. 341, *ante.*

Visitors' book.—See notes to secs. 193 and 194, *ante.*

Register of patients.—As to form of, see r. 2, *inf.*; entries in, on reception, r. 8 (1), *post*; on removal, etc., r. 22, *post.* As to separate registers for separate classes, see (4), *inf.*

Register . . . deaths.—As to form of, r. 3, *inf.* As to entries in, r. 22, *post.*

Medical journal.—As to form of, see r. 4, *inf.* As to separate journals for separate classes, see (4), *inf.*; or sexes, r. 4 (1), *inf.*

Who to keep, r. 10, *post.* Entries, how often to be made in, r. 11, *post.* In case of single patients, r. 1 (3), *inf.*, r. 4 (2), *inf.*, r. 16, *post.*

Register of mechanical restraint.—As to form of, r. 5, *inf.*; copies of entries in, r. 18, *post.* As to mechanical restraint, see sec. 40, *ante*, and Regulations by Commissioners 1895, *post.*

A medical case book.—Who to keep, r. 10, *post.* Entries, how often to be made in, r. 11, *post.* Entries in, r. 12, *post.* Subsequent entries in, r. 13, *post.* Copies of, r. 14, *post.*

A post-mortem book.—This provision is new. As to form of, see r. 7, *inf.* Who to keep, and make entries in, r. 10, *post.* Copies of entries, r. 15, *post.*

[1] The corresponding rules in the Rules of the Commissioners, 29th March 1890, are noted in the margin as R.C. 1890, r. —. As to power of Commissioners to make rules, see sec. 338, subs. (1), *ante.* Where sections are cited without reference to an Act, the Act of 1890 is intended.

(2) There shall also be kept in every asylum receiving private patients, hospital, and licensed house, a patients' book, and in every hospital and licensed house receiving boarders a register of all voluntary boarders, and a case book for voluntary boarders for treatment.

Rule 1 (2)-(4).

R.C. 1890, r. 1 (2).

Asylum.—Definition of, sec. 341, *ante.*
Private patients.—Definition of, sec. 341, *ante.* This clause is new.
Hospital.—Definition of, sec. 341, *ante.*
Licensed house.—As to, see sec. 207, *ante.*
Patients' book.—As to entries in, see sec. 78, subs. (4), sec. 194, subs. (3), sec. 197, *ante.*
Receiving boarders.—See sec. 229, *ante.*
Register of all voluntary boarders.—As to form of, r. 6, *inf.*
Case book for voluntary boarders.—Entries in, r. 14, *post.* Copies of, r. 15, *post.* Who to keep, r. 19, *post.*

(3) There shall be kept in every house where a single patient is detained a medical journal and a register of mechanical restraint.

R.C. 1890, r. 1 (3).

House . . . single patient.—See secs. 4, 5 *et seq.*, as to reception of single patients, *ante.*
A medical journal.—See notes to r. 1 (1) (*d*), *sup.*
A register of mechanical restraint.—See notes to r. 1 (1) (*e*), *sup.*

(4) In every institution for lunatics in which private and pauper patients are admitted there shall be kept a separate register of patients, medical journal, and register of removals, discharges, and deaths, for each class of patients.

R.C. 1890, r. 1 (4).

Institution for lunatics.—Definition of, sec. 341, *ante.*
Private patients.—Definition of, sec. 341, *ante;* see sec. 241, *ante.*
Pauper patients.—Definition of, sec. 341, *ante;* see sec. 241, *ante.*
Separate . . . for each class.—As to separate medical journals for different sexes, see r. 4 (2), *inf.*
Register of patients.—See notes to r. 1 (1) (*b*), *sup.*
Medical journal.—See notes to r. 1 (1) (*d*), *sup.*
Register of removals, etc.—See notes to r. 1 (1) (*c*), *sup.*

2. The register of patients shall be in the Form 1 in the Schedule.

Register of patients R.C. 1890, r. 2.

Register of patients.—See notes to r. 1 (1) (*b*), *sup.*
Form 1—post.

3. The register of removals, discharges, and deaths shall be in the Form 2 in the Schedule.

Register of removals, discharges, and deaths. R.C. 1890, r. 6.

Register . . . deaths.—See notes to r. 1 (1) (*c*), *sup.*
Form 2—post.

4. (1) The medical journal to be kept in institutions for lunatics

Rule 4. (1), (2). shall be in the Form 3 in the Schedule; but, if desired, a separate journal may be kept for each sex.

Medical journal. R.C. 1890. r. 3 (1).

Medical journal.—See notes to r. 1 (1) (*d*), *sup.*
Institutions for lunatics.—Definition of, sec. 341, *ante.*
Form 3—*post.*
Separate journal . . . sex.—This clause is new. As to separate journals for separate classes of patients, see r. 1 (4), *sup.*

R.C. 1890, r. 3 (2). (2) The medical journal in the case of single patients shall be in the Form 4 in the Schedule.

Single patients.—See r. 1 (3), *sup.*
Form 4—*post.*

Register of mechanical restraint. R.C. 1890, r. 4. **5.** The register of mechanical restraint shall be in the Form 5 in the Schedule, and at the beginning of it a printed copy of the regulation made by the Commissioners in Lunacy as to mechanical restraint shall be inserted.

Register, etc.—See r. 1 (1) (*e*), *sup.*
Form 5—*post.*
Regulation.—See *post.*

Register of boarders. R.C. 1890, r. 5. **6.** The register of voluntary boarders shall be in the Form 6 in the Schedule.

Register, etc.—See r. 1 (2), *sup.*
Form 6—*post.*

Post-mortem book. **7.** The post-mortem book shall be in the Form 7 in the Schedule.

This is new.
Post-mortem book.—See r. 1 (1) (*g*), *sup.*
Form 7—*post.*

Notices to be sent on reception. R.C. 1890 r. 7 (1). **8.** (1) The clerk of every asylum, the superintendent of every hospital, and the resident licensee of every licensed house shall, immediately on the reception of a person as a lunatic, make an entry with respect to such lunatic in the register of patients according to the form prescribed therein, and containing the particulars therein specified, except as to the form of mental disorder, and the bodily condition and name of disease (if any).

The clerk.—As to appointment of, see sec. 276, subs. (1) (*d*), *ante.*
Asylum.—Definition of, sec. 341, *ante.*
Superintendent . . . house.—In r. 7 (1) of the R.C. 1890, the corresponding words were "the manager of every hospital and licensed house." As to "superintendent," see sec. 276, subs. (1) (*d*), *ante*; and definition of "manager," sec. 341, *ante.* Definition of "hospital," sec. 341, *ante.* As to "residence" of licensee and licensed house, see sec. 207, *ante.*
The reception.—As to reception of patients, see secs. 4, 5-8, 11-23, *ante.*

Rule 8 (1)-(4).

Lunatic.—Definition of, sec. 341, *ante.*
Entry.—As to entries on removal, etc., see r. 22, *post.*
Register of patients.—See r. 1 (1) (*b*), *ante.*
Form—*post.*
Except . . . (if any).—See r. (2), *inf.* "The bodily condition and name of disease (if any)." This clause is new.

(2) The entries as to the form of mental disorder and the bodily condition and name of disease (if any) shall be supplied by the medical officer of every asylum, hospital, or house within seven days after the reception of a patient. R.C. 1890, r. 7 (2).

The entries . . . (if any).—See notes to r. (1), *sup.*
Medical officer.—Definition of, sec. 341, *ante.*
For definitions, see notes to r. (1), *sup.*
Within.—See *ante* p. 117.
Days.—See *ante* p. 145.

(3) The clerk of every asylum, the superintendent of every hospital, and the resident licensee of every licensed house shall, in the case of a person not a pauper, within one clear day, and in the case of a pauper, and of a criminal lunatic, after the second and before the end of the seventh day after the patient's admission, send to the Commissioners a notice of admission, and also copies of the reception order and of the medical certificate or certificates upon which the same was made, and in the case of reception orders upon petition copies of the petition and statement of particulars; and shall, in every case after the second and before the end of the seventh clear day after the patient's admission, send to the Commissioners a medical statement to be made and signed by the medical officer of the institution. Where a patient has been admitted under an urgency order, which is followed by a reception order made on petition, a copy of such last-mentioned order, together with copies of the petition and certificates on which it was made, shall be transmitted by the same persons respectively to the Commissioners within one clear day after the same order has been obtained. R.C. 1890, r. 7 (3).

The clerk . . . house.—See r. 8 (1), and notes, *sup.*
Clear day.—See *ante* p. 164.
Pauper.—Definition of, sec. 341, *ante;* and as to reception of, see *ante* pp. 127 *et seq.*
Criminal lunatic.—Definition of, sec. 341, *ante.* This clause is new.
The reception order.—See secs. 4, 5; and definition of, sec. 341, *ante.*
Notice of admission.—Form of, Form 8, *post*, and (4), *inf.*
The medical certificate.—Form of, Form 8, *post*, and (4), *inf.*
Petition.—See sec. 4, *ante.*
Statement of particulars.—See sec. 4, *ante.*
Medical statement.—Form of, Form 10, *post*, and (4), *inf.*
Urgency order.—Form of, Form 10, *post*, and (4), *inf.*

(4) In the case of a pauper and of a criminal lunatic, the notice of admission and statement shall be in the Form 8 in the Schedule, and

Rule 8 (5)-(8).

in the case of a private patient, the notice of admission shall be in the Form 9, and the medical statement shall be in the Form 10 in the Schedule.

This is new.
See notes to (3), *sup.*
Form 8—*post.*
Private patient.—Definition of, sec. 341, *ante.*
Form 10—*post.*

R.C. 1890, r. 7 (4).

(5) The resident licensee of every licensed house, within the jurisdiction of visitors, shall also within the times limited by this rule, send the like documents to the clerk of the visitors.

Resident licensee.—See notes to r. 8 (1), *sup.*
Within the jurisdiction of visitors.—See sec. 208, *ante.*
The times.—See (4), *sup.*
The clerk of the visitors.—See sec. 178, subs. (1), *ante.*

(6) The superintendent of every hospital and the resident licensee of every licensed house shall within one clear day after the reception of a voluntary boarder send to the Commissioners notice of such reception, according to Form 11 in the Schedule; and shall also, within the same period of his death or leaving the hospital or house, send them notice thereof.

This is new.
The superintendent . . . house.—See notes to (1), *sup.*
Clear day.—See note to (3), *sup.*
Voluntary boarders.—As to reception of, see sec. 229, *ante.* As to register of, see notes to r. 1 (2), *ante.*
Form 11—*post.*

R.C. 1890, r. 7 (5).

(7) Every person who has charge of a single patient shall, within the times limited by this rule as regards patients not paupers, send to the Commissioners the like documents concerning such single patient, and shall, with the notice of admission, send a statement of the Christian name and surname and occupation of the occupier of the house, and of the person who has charge of the patient. The medical statement shall be made and signed by the medical practitioner who visits the patient, and who shall therein state his address.

Single patient.—As to reception of, see secs. 4, 5, *ante.*
The times.—See (3), *sup.*
The like documents.—See (3), *sup.*
Notice of admission.—Form 9, *post.*
Medical statement.—Form 10, *post.*
Medical practitioner.—Definition of, sec. 341, *ante.*
Who shall state, etc.—This is new.

(8) The clerk of every asylum and the superintendent of every hospital shall, in the case of a patient admitted as a criminal lunatic,

Rule 9.

but subsequently detained as a pauper lunatic under an order of a justice made under the Acts relating to criminal lunatics, send to the Commissioners, some day not less than two clear days, nor more than seven clear days, after the patient has ceased to be a criminal, a notice thereof in Form 12, together with a copy of the justice's order for continued detention (which for the purpose of section 38 of the Lunacy Act 1890, and section 7 of the Lunacy Act 1891, is the Reception Order), and shall within the same limits of time send to the Commissioners a statement to be made and signed by the medical officer of the asylum or hospital.

This is new.

The clerk.—See sec. 276, subs. (1) (*d*), *ante.*

Asylum.—Definition of, sec. 341, *ante.*

Superintendent (manager).—Definition of, sec. 341, *ante.* As to appointment of, see sec. 276, subs. (1) (*c*), *ante.*

Hospital.—Definition of, sec. 341, *ante.*

Criminal lunatic.—Definition of, sec. 341, *ante.*

Subsequently detained, etc.—See Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64), secs. 7 and 8, *post.*

Pauper lunatic.—Definition of, sec. 341, *ante.*

Clear days.—See note to (3), *sup.*

Form 12—*post.*

Section 38 . . . *section* 7.—See *ante* pp. 184, 185.

Medical officer.—Definition of, sec. 341, *ante.*

Form of report to be sent at the end of a month after reception. R.C. 1890, r. 8.

9. The report to be sent to the Commissioners by the medical officer of every institution for lunatics, and the medical attendant of every single patient, at the expiration of one calendar month after the reception of a private patient, shall be in the Form 13 in the Schedule.

The report.—See sec. 39, *ante.*

Medical officer.—Definition of, sec. 341, *ante.*

Institution for lunatics.—Definition of, sec. 341, *ante.*

Single patient.—As to reception of, see secs. 4, 5, *ante.* As to medical attendance on, see secs. 43-45, *ante.*

Calendar.—This word is new.

Form 13—*post.*

Who to keep medical journal and case books. R.C. 1890, r. 9.

10. The entries in the medical journal, case books, and post-mortem book, to be kept in every institution for lunatics, shall be made by the medical officer thereof, or by an assistant medical officer under his supervision and control, and every such entry shall be signed or initialled by the person making the same.

It will be observed that this rule, differing from r. 9 of the R.C. 1890, which gave the custody to the medical officer, does not provide as to who is to "keep" the medical journal, etc. The marginal note is, therefore, misleading.

The entries in the medical journal.—See note to r. 11, *inf.*

Rule 11.

The entries in the case books.—See rr. 12, 13, and 27 (3), *post;* and r. 14, *post*, as to entries in case book for voluntary boarders.

The entries in the post-mortem book.—The rules do not prescribe any entries to be made in the post-mortem book. But the nature of the entries that should be made appears from Form 7, *post.* As to post-mortem book, see r. 1 (1) (*g*), *ante.* As to copies of entries, see r. 15, *post.*

Institution for lunatics.—Definition of, sec. 341, *ante.*

Medical officer.—Definition of, sec. 341, *ante.*

An assistant . . . control.—This is new.

Or initialled.—This is new. Entries made by medical attendant of single patient require to be signed (r. 16 (4), *post*).

How often entries to be made in medical journal. R.C. 1890, r. 10.

11. The prescribed entries in the medical journal to be kept in institutions for lunatics shall be made once in every week, or, in the case of a licensed house at which visits by a medical practitioner at more distant intervals than once a week are permitted, at each visit.

The prescribed entries in the medical journal.—See Form 4, *post.* See also sec. 201, subs. (2), *ante.*

To be kept.—See r. 1 (1) (*d*), *ante.*

Institutions for lunatics.—Definitions of, sec. 341, *ante.*

Made.—As to, by whom, see r. 10, *sup.*

More distant intervals.—See sec. 228, subs. (5), *ante.*

Entries in case books in asylums, hospitals, and licensed houses. R.C. 1890, r. 11.

12. Within seven days after the admission of a patient there shall be entered in the medical case book for patients the following particulars :—

(*a*) A statement of the name, age, sex, and previous occupation of the patient, and whether married, single, or widowed, and a copy of the statement of facts contained in the medical certificates accompanying the reception order;

(*b*) An accurate description of the external appearance of the patient upon admission :—of the habit of body and temperament; appearance of eyes, expression of countenance, and any peculiarity in form of head; physical state of the vascular and respiratory organs, and of the abdominal viscera, and their respective functions; state of the pulse, tongue, skin, etc.; and the presence or absence, on admission, of bruises or other injuries;

(*c*) A description of the phenomena of the mental disorder :—the manner and period of the attack, with a minute account of the symptoms, and the changes produced in the patient's temper or disposition; specifying whether the malady displays itself by any, and what, delusions, or irrational conduct, or morbid or dangerous habits or propensities; whether it has occasioned any failure of memory or understanding; or is connected with epilepsy, or ordinary paralysis, or general paralysis;

(*d*) Every particular which can be obtained respecting the previous history of the patient:—what are believed to have been the predisposing and exciting causes of the attack; what were the previous habits, whether active or sedentary, temperate or otherwise; whether the patient has experienced any former attacks and, if so, at what periods; whether any relatives have been subject to insanity or other nervous disease, or phthisis; whether the present attack was preceded by any and what premonitory symptoms; and whether the patient has undergone any, and what, previous treatment, or has been subjected to restraint of personal liberty. **Rule 12.**

Within seven days.—This is new. Rule 11 of the R.C. 1890 added to the particulars (*a*)-(*d*), *sup.*, (*e*), an accurate record of the medicines administered and other remedies employed, with the results, and (*f*) an accurate record of all injuries and accidents, and then r. 12 provided as follows:—

"The prescribed entries shall be made in the case book to be kept in every institution for lunatics at least once in every week during the first month after reception, and oftener when the nature of the case requires it. Afterwards in recent or curable cases such entries shall be made at least once in every month, and in chronic cases, subject to little variation, once in every three months."

Rules 12 and 13 of the new rules distinguish between what may be termed the original and the subsequent entries, retaining the seven days' limit for the former, and expanding r. 12 of the R.C. 1890 in regard to the latter. See *ante* pp. 117 and 145 as to meanings of "within" and "days."

(*a*) *A copy . . . order.*—This clause is new. As to the statement in question, see sec. 4, subs. (2), *ante*, and Form 2, Sched. ii., *ante*.

(*c*) *General paralysis.*—In r. 11 R.C. 1890 the following unnecessary description of some of the symptoms of general paralysis was added "such as tremulous movements of the tongue, defect of articulation, or weakness, or unsteadiness of gait."

(*d*) *Or other nervous disease or phthisis.*—This is new.

Premonitory symptoms.—Here again r. 11 of the R.C. 1890 added an enumeration of certain symptoms, "such as restlessness, unusual elevation or depression of spirits, or any remarkable deviation from ordinary habits and conduct."

Restraint of personal liberty.—In r. 11 of the R.C. 1890 the corresponding words were "personal restraint."

13. Subsequent entries describing the course and progress of the case, and recording the medical and other treatment, with the results, shall be made in the case book for patients at the times hereinafter mentioned, that is to say: once at least in every week during the first month after reception, and oftener when necessary; afterwards, in recent or curable cases, once at least in every month, and in chronic cases, subject to little variation, once in every three months. But all special circumstances affecting the patient, including seclusion and mechanical restraint, and all accidents and injuries, must be at once recorded. A printed copy of this and the last

How often entries to be made in case book. R.C. 1890, r. 12.

Rule 14.

preceding rule shall be inserted at the beginning of every case book for patients.

See notes to r. 12, *sup.*

Mechanical restraint.—See sec. 40, *ante*, and Regulation, *post*. As to register of, see r. 1 (1) (*e*), *ante*.

Entries in case book for voluntary boarders.

14. In the case book for voluntary boarders for treatment there shall within seven days after reception be made an entry giving the name, age, sex, previous occupation, and residence of the boarder, and a full and accurate description of his mental and bodily condition.

Entries describing the course and progress of the case shall be subsequently made at the same intervals as are prescribed by the foregoing rule for patients.

This is new.

Case book for voluntary boarders.—See r. 1 (2), *ante*.

Within seven days.—See notes to r. 12, *ante*.

Reception.—As to, see sec. 229, *ante*.

An entry . . . condition.—The particulars enumerated in r. 12 may be taken as a guide.

Copies of case book or other entries. R.C. 1890 r. 13.

15. The medical officer for every institution for lunatics shall, whenever so required by the Commissioners, send to them correct copies of all the entries, or of any particular entries or entry, in the case of post-mortem books relative to any specified patient or boarder, who is, or may have been, confined or resident in the institution.

Medical officer.—Definition of, sec. 341, *ante*.

Institution for lunatics.—Definition of, sec. 341, *ante*.

Required by the Commissioners.—In r. 13 of the R.C. 1890 the corresponding words were "required . . . by notice in writing signed by the secretary of the Commissioners." A verbal requisition would now be sufficient. As to penalty for default, see sec. 320, *ante*.

Case . . . books.—See r. 1 (1) (*f*), *ante*, as to medical case book; and r. 1 (2), *ante*, as to case book for voluntary boarders.

Post-mortem book.—See r. 1 (1) (*g*), *ante;* and as to entries in, see r. 10, *ante*.

Or boarder . . . resident in.—These words are new.

Duties of medical attendant of single patient. R.C. 1890, r. 14 (1).

16. (1) The medical attendant of a single patient shall, as soon as possible after the admission of the patient, enter on blank pages to be left at the beginning of the medical journal a sketch of the previous history of the case and full particulars of the mental and bodily condition of the patient on admission.

Medical attendant.—See secs. 43-45, *ante*.

Single patient.—Definition of, sec. 341, *ante*.

Medical journal.—See r. 1 (3), *ante*.

A sketch . . . full particulars.—See r. 12, *ante*. As to penalty for default, see sec. 320, *ante*. As to making false entries, etc., see sec. 318, *ante*.

(2) Such medical attendant shall also at each visit enter in the medical journal the date of the visit and full particulars of the mental and bodily condition of the patient, and all the other particulars indicated in Form 4.

Rule 16 (2)-(4).

R.C. 1890, r. 14 (2).

See notes to (1), *sup.*

At each visit.—See sec. 44, *ante.*

All the other . . . Form 4.—These words take the place of "a statement as to the condition of the house" in r. 14 (2), R.C. 1890. Form 4, *post*, however, provides for this.

(3) If the Commissioners allow a single patient to be visited less often than once in every two weeks, and the patient is in the charge of a medical practitioner, such practitioner shall once at least in every two weeks enter in the medical journal the particulars prescribed in the last preceding subsection, together with the date of the entry.

ib. (3).

See notes to (2), *sup.*

The Commissioners allow.—See sec. 44, subss. (1), (2), *ante.*

Medical practitioner.—Definition of, sec. 341, *ante.*

The particulars.—See (2), *sup.* In r. 14 (3) of the R.C. 1890 the corresponding words were "full particulars of the mental and bodily condition of the patient."

(4) Every entry to be made under this rule shall be signed by the person who makes the same.

ib.(4).

Signed.—Entries under r. 10, *ante*, may be initialled.

17. Every medical practitioner who visits a single patient, or under whose charge a single patient is, shall on the tenth of January, or within seven days from that time, in every year, report in writing to the Commissioners the state of health, bodily and mental, of the patient, with such other circumstances as he may deem necessary to communicate.

Medical reports upon single patients. R.C. 1890, r. 15.

Medical practitioner.—Definition of, sec. 341, *ante.*

Single.—As to visitation of single patients by medical practitioners, see secs. 43-45, *ante.*

Within seven days.—As to meanings of "within" and "days" see *ante* pp. 117 and 145.

18. The superintendent of every asylum and hospital, the resident licensee of every licensed house, and every person having charge of a single patient, shall at the end of every quarter send to the Commissioners a copy of every entry in the register of mechanical restraint made during the quarter. If no such restraint has been used during the quarter, a return to that effect shall be made.

Copies of entries in register of mechanical restraint. R.C. 1890, r. 16.

The superintendent . . . house.—The corresponding words in r. 16 of the R.C. 1890 were "the manager of every institution for lunatics." As to

Rule 19.

"superintendent," see 276, subs. (1) (*c*), *ante*; and definition of "manager" in sec. 341, *ante*. "Asylum," "hospital," definition of, sec. 341, *ante*. As to "resident licensee," see sec. 211, *ante*. "Licensed house," see sec. 207, *ante*.

Register of mechanical restraint.—See r. 1 (1) (*e*), *ante*. As to "mechanical restraint," see sec. 40, *ante*, and Regulation, *post*.

Who to keep register of voluntary boarders. R.C. 1890, r. 17.

19. The register of voluntary boarders to be kept in hospitals and licensed houses shall be kept by the superintendent or resident licensee thereof.

The register of voluntary boarders.—See r. 1 (2), *ante*; and as to "voluntary boarders," see sec. 229 and sec. 231, subs. (8), *ante*.

Hospitals.—Definition of, sec. 341, *ante*.

Licensed houses.—See sec. 207, *ante*.

Superintendent.—Definition of, sec. 341, *ante*. As to appointment of, see sec. 278, subs. (1) (*c*), *ante*.

Resident licensee.—See sec. 211, *ante*.

Schedule of rates of payments for private patients and boarders. R.C. 1890, r. 18.

20. The superintendent of every hospital and the resident licensee of every licensed house shall prepare and keep up accurate lists of the private patients and boarders for the time being on the books of the hospital or house, with the rates of payment made for the maintenance and care and treatment of such patients and boarders respectively; and such lists shall be at all times accessible to the Commissioners or Commissioner visiting the hospital or house, and, in the case of a house licensed by justices, to the visitors of such house.

The superintendent . . . house.—The corresponding words in r. 18 of the R.C. 1890 were "the manager of any licensed house and hospital." See notes to r. 18, *sup.*

Private patients.—Definition of, sec. 341, *ante*.

And boarders.—These words are new.

Such lists, etc.—See also sec. 194, subs. (1) (*f*), and sec. 196, *ante*.

A house licensed by justices.—See sec. 208, subs. (2), *ante*.

The visitors of such house.—See sec. 177, *ante*.

Transfer of patients and leave of absence. R.C. 1890, r. 19 (1).

21. (1) When application is made to the Commissioners for their consent to the transfer of a private patient from one institution for lunatics to another, or to or from single care, the medical officer of the institution from which the patient is to be removed, or the medical attendant of the single patient, shall furnish the Commissioners with a report as to the patient's mental and bodily condition, and fitness for transfer, and especially as to whether he is suicidal or dangerous to others.

When application is made.—See sec. 58, *ante*.

Private patient.—Definition of, sec. 341, *ante*.

Institution for lunatics.—Definition of, sec. 341, *ante*.

Or to or from single care.—This clause is new.

Medical officer.—Definition of, sec. 341, *ante*.

Or the medical . . . patient.—This clause is new. As to medical attendance on single patients, see secs. 43-45, *ante*. Rule 21. (2).

A report.—Wilful misstatement in, a misdemeanour (see sec. 317, subs. (2), *ante*).

And especially . . . others.—This clause is new.

(2) When application is made for the grant by the Commissioners, or by visitors, of leave of absence of a private patient from an institution for lunatics, or of a single patient from the house in which he is received, either for the benefit of the patient's health or on trial, it shall be accompanied by a recommendation from the medical officer of the institution or the medical attendant of the patient. R.C. 1890, r. 19 (2).

When application is made, etc.—See sec. 55, *ante*. See notes to (1), *sup*.

22. The clerk of every asylum, the superintendent of every hospital, and the resident licensee of every licensed house shall, within two clear days after the removal, discharge, death, or transfer from the private to the pauper class, or *vice versâ* of any patient, make an entry thereof in the register of patients, and also in the register of removals, discharges, and deaths, according to the form prescribed therein respectively, and in the case of deaths an entry shall be made also in the medical journal by the medical officer. Entries to be made on removal, discharge, or death. R.C. 1890, r. 22.

The clerk.—See sec. 276, subs. (1) (*d*), *ante*, as to appointment of.

Asylum.—Definition of, sec. 341, *ante*.

The superintendent . . . house.—These words are new. See notes to r. 20, *sup*.

Clear days.—See note to r. 8 (3), *ante*.

The removal.—See secs. 58, 59, subs. (1), secs. 61, 64, 65.

Discharge.—See secs. 72-75, 77-79.

Death.—See sec. 84 as to inquiry by coroner, *ante*.

Or transfer . . . vice versâ.—This is new.

The register of patients.—See r. 1 (1) (*b*), *ante*.

The register of removals, etc.—See r. 1 (1) (*c*), *ante*.

Medical journal.—See r. 1 (1) (*d*), *ante*.

Medical officer.—Definition of, sec. 341, *ante*.

23. (1) The clerk of every asylum, the superintendent of every hospital, and the resident licensee of every licensed house, and the person having charge of a single patient shall, within two clear days after the removal, discharge, escape, or recapture of a patient, or his transfer from the private to the pauper class, or *vice versâ*, send written notice thereof to the Commissioners, and also, in the case of a lunatic so found by inquisition, to the Chancery Visitors. Notices to be sent on removal, discharge, escape, and recapture. R.C. 1890, r. 23 (1).

The clerk . . . house.—See notes to r. 22, *sup*.

Two.—"Three" under r. 23 of the R.C. 1890.

Clear days.—See note to r. 8 (3), *sup*. As to neglect to send notices, see secs. 316 and 320, *ante*.

The removal, discharge.—See notes to r. 22, *sup*.

Rule 23 (1)-(4).

Escape or recapture.—See secs. 85-89, *ante.*
Or his transfer . . . vice versâ.—This is new.
A lunatic.—Definition of, sec. 341, *ante.*
So found by inquisition.—Definition of inquisition, see sec. 341, *ante.* As to inquisition, see sec. 92, *ante.*
The Chancery Visitors.—See sec. 183, *ante.*

R.C. 1890, r. 23 (2).

(2) In the case of a licensed house within the jurisdiction of any visitors, the like notice shall, within the time aforesaid, also be sent by the resident licensee of the house to the visitors.

A licensed house within the jurisdiction.—See sec. 208, subs. (2), *ante.*
Any visitors.—See sec. 177, *ante.*
The like notice, etc.—See (1), *sup.*
Resident licensee.—See sec. 211, *ante.* The words in r. 23 (2) of the R.C. 1890 were "manager of the house."

ib. (3).

(3) Notices of removal and discharge shall be in the Forms 14 and 15 in the Schedule. Notices of escape and recapture shall be in the Forms 16 and 17 in the Schedule. Notice of transfer from the private to the pauper class, or *vice versâ*, shall be in Form 18 in the Schedule.

See notes to (1) and (2), *sup.*
Forms 14 *and* 15—*post.*
Forms 16 *and* 17—*post.*
Form 18—*post.*

(4) Where upon the discharge of a pauper lunatic from an institution for lunatics the medical officer of the institution certifies, under section 25 of the Lunacy Act 1890, that the lunatic has not recovered, and is a proper person to be kept in a workhouse as a lunatic, a copy of the certificate shall accompany the notice of discharge.

Under section 25 *of the Lunacy Act* 1890.—See *ante* p. 156. This is new.

Notices to be sent of entries on visitation. R.C. 1890, r. 20 (1).

24. (1) The clerk of every asylum, the superintendent of every hospital, and the resident licensee of every licensed house shall, within two clear days after each visit of one or more of the Commissioners, send to the Commissioners, and in the case of a house licensed by justices, also to the clerk of the visitors, copies of all entries made by any visiting Commissioner or Commissioners at such visit in the visitors' book or patients' book of the institution.

The clerk . . . house.—See notes to r. 22, *ante.*
Two.—"Three" under r. 20 (1) of the R.C. 1890.
Clear days.—See note to r. 8 (3), *ante.*
Each visit.—As to visitation of Asylums by Commissioners, see sec. 187, *ante.* As to hospitals and licensed houses, see sec. 191, *ante.*
The Commissioners.—In r. 20 (1) of the R.C. 1890 the words "office of

the Commissioners" were used. Communications to the Commissioners should be sent to

Rule 24 (1), (2).

THE SECRETARY,
Commissioners in Lunacy,
19 Whitehall Place,
London, S.W.

A house licensed by justices.—See sec. 208, subs. (2), *ante.*

The clerk of the visitors.—See sec. 276, subs. (1) (*d*), *ante.*

Entries.—See notes to sec. 187, subs. (1), and sec. 193, subs. (2), *ante.* In r. 20 (1) of the R.C. 1890 the words "and remarks" were added. The marginal note to that rule also read "notices to be sent of remarks on visitation."

Visitors' book.—See r. 1 (1) (*a*), *ante.*

Patients' book, i.e. case book for patients, *ib.* (*f*), *ante.*

As to penalty for default, see sec. 320, *ante.*

(2) The resident licensee of every licensed house shall also, within two clear days after each visit by any visitor, send to the Commissioners and to the clerk to such visitors a true and perfect copy of all entries made by such visitors at such visit in either of the last-mentioned books.

ib. (2).

See notes to (1), *sup.*

The resident licensee.—See sec. 211, *ante.* In r. 20 (2) of the R.C. 1890 the word was "manager."

Licensed house.—In r. 20 (2) of the R.C. 1890 the words "every hospital" were included.

25. The clerk of every asylum, the superintendent of every hospital, and the resident licensee of every licensed house shall, within two clear days after the dismissal for misconduct of any person employed in connection with the care of the patients therein, send notice in writing to the Commissioners of the dismissal and its cause.

Notice of dismissal of servants. R.C. 1890, r. 21.

The clerk . . . house.—See notes to r. 22, *ante.*

Two clear days.—One week was given under r. 21 of the R.C. 1890. As to "clear days," see note to r. 8 (3), *ante.*

26. With respect to patients whose reception orders were dated on or prior to the first day of February 1890, the special reports and certificates under section 38 of the Lunacy Act 1890, and section 7 of the Lunacy Act 1891, shall be included in one list, and shall be furnished according to Form 19 in the Schedule; and with respect to patients whose reception orders are dated subsequently to the first day of February 1890, a special report and certificate under the above-mentioned enactments shall be made and signed for each such patient in Form 20 in the Schedule.

Special reports and certificates.

This rule is new.

See notes to sec. 38, *ante.*

Forms 19, 20—*post.*

Rule 27 (1)-(3).

Statement and notice as to death.

R.C. 1890, r. 24 (1), (2).

27. (1) In case of the death of a patient, notice thereof, together with a statement relating thereto, shall, within forty-eight hours of the death, be sent by the manager of the institution for lunatics in which the patient died, or, in the case of a single patient, by the person having charge, to the coroner of the district.

A patient.—As to form of notice, see (2), *inf.* In r. 24 (1) the words "not being a patient in a workhouse" were added here, and there was no provision for "notice."

A statement.—As to form of, see (2), *inf.* In r. 24 (1) of the R.C. 1890 the statement was required to set forth—

(*a*) The name, sex, and age of the patient;
(*b*) Whether married, single, or widowed;
(*c*) The profession or occupation of the patient;
(*d*) His place of abode immediately prior to being placed under care and treatment, if known;
(*e*) The time and cause of, and the circumstances attending, the death;
(*f*) The duration of the disease of which the patient died;
(*g*) The name or names of any person or persons present at the death.

These and other particulars are now embodied in Form 21, *post.*

Within forty-eight hours.—In r. 24 of the R.C. 1890 the limit of time (which is not changed) was contained in (2) and not in (1), which the present clause reproduces. As to meaning of "within," see *ante* p. 117.

Manager.—Definition of, sec. 341, *ante.*

Institution for lunatics.—Definition of, sec. 341, *ante.*

Single patient.—As to reception of, see secs. 4 and 5, *ante.*

The coroner of the district.—As to inquiries by coroner, see sec. 84, *ante.*

ib. (2).

(2) The notice in the case of a death in an asylum shall be prepared and signed by the clerk, and the statement shall be prepared and signed by the superintendent, and in any other case the notice and statement shall be prepared and signed by the medical superintendent, or the medical attendant, or the medical person or persons who attended the patient in his last illness, and such notice and statement respectively shall be in the Form 21 in the Schedule.

The notice.—See notes to (1), *sup.*

The clerk.—See sec. 276, subs. (1) (*d*), *ante.*

The statement.—See notes to (1), *sup.*

The superintendent.—See definition of in sec. 341 (manager), *ante.* Under r. 24 (2) of the R.C. 1890 the statement was to be "prepared and signed in the case of a death in the asylum by the clerk and medical officer . . . and in any other case by the medical person or persons who attended the patient in his last illness."

The medical attendant.—See secs. 43-45 as to medical attendance on single patients. Rule 24 (2) contained a further provision, now reproduced in (1) of this rule for notice to the coroner (Form 21, *post*).

ib. (3).

(3) In the case of a lunatic dying in an institution for lunatics, the medical officer of the institution shall, within two clear days after the death, enter or cause to be entered a copy of the foregoing state-

ment in the case book, and in the case of a single patient the person having charge of him shall, within the like period, enter a copy of the statement in the medical journal. **Rule 27 (4).**

Lunatic.—Definition of, sec. 341, *ante.*
Institution for lunatics.—Definition of, sec. 341, *ante.*
Medical officer.—Definition of, sec. 341, *ante.*
Two.—"Three" in r. 24 (3) of the R.C. 1890.
Clear days.—See note r. 8 (3), *ante.*
The statement.—See (1) and (2), *sup.*
The medical case book.—See r. 1 (1) (*f*), *ante.*
Single patient.—As to reception of, see secs. 4, 5 *et seq.*, *ante.*
The medical journal.—See r. 1 (3), *ante.*

(4) The clerk of the asylum, the superintendent of the hospital, the resident licensee of the house, or, in the case of a single patient, the person who had charge, shall, within forty-eight hours of the death of a patient, send a like notice and statement— R.C. 1890, r. 24 (4).

(*a*) To the Commissioners;
(*b*) To the relation or one of the relations named in the statement accompanying the order for the reception of the patient, or, if none be known, to the person named for the purpose in such statement;
(*c*) To the registrar of deaths for the district;
(*d*) In the case of a licensed house within the jurisdiction of any visitors, also to the clerk of the visitors;
(*e*) In the case of a lunatic so found by inquisition, also to the Chancery Visitors;
(*f*) If the patient was not a pauper, also to the person upon whose petition the order for the admission of the patient was made, or who made the last payment on account of the patient;
(*g*) If the patient was a pauper, also to the clerk to the guardians of the union, or the clerk of the local authority to which the patient was chargeable.

The clerk . . . house.—See notes to r. 22, *ante.*
Single patient.—As to reception of, see secs. 4, 5, etc., *ante.*
A like notice and statement.—See notes to (1), (2), and (3), *sup.*

(*a*) *The Commissioners.*—Communications to the Commissioners are to be sent to

THE SECRETARY,
Commissioners in Lunacy,
19 Whitehall Place,
London, S.W.

(*b*) *Or, if none . . . statement.*—This clause is new.
(*c*) *The registrar of deaths.*—See also secs. 10, 20, and 48 of the Births and Deaths Registration Act 1874 (37 & 38 Vict. c. 88).
(*d*) *A licensed house within, etc.*—Secs. 177 and 208, subs. (2), *ante.*
The clerk to the visitors.—See sec. 178, *ante.*
(*e*) *A lunatic so found.*—See sec. 90, *ante.*

Rule 28.

Chancery Visitors.—See sec. 183, *ante.*

(*f*) *Pauper.*—Definition of, sec. 341, *ante.*

The person upon whose petition, etc.—See sec. 5, subs. (1), *ante.* Or his substitute (see sec. 48, *ante*).

(*g*) *Guardians.*—Definition of, sec. 341, *ante.*

Clerk . . . authority.—Definition of, sec. 341, *ante.*

Chargeable.—See sec. 286, *ante.*

Notice of change in medical staff.

28. The clerk of every asylum, the superintendent of every hospital, and the resident licensee of every licensed house, shall within seven days after the happening thereof, send to the Commissioners notice of every change in the medical staff of such institutions respectively.

This rule is new.

The clerk . . . house.—See notes to r. 22, *ante.*

Within seven days.—As to meanings of "within" and "days," see *ante* pp. 117 and 145.

Send to the Commissioners.—See note to r. 27 (4) (*a*), *sup.*

Half-yearly lists of patients in asylum to be made up. R.C. 1890, r. 25 (1).

29. (1) The clerk of every asylum shall, on the first of January and the first of July in every year, prepare a list, made up to those dates, of all pauper lunatics then in the asylum, according to the Form 22 in the Schedule.

The clerk of every asylum.—See sec. 276, subs. (1) (*d*), *ante.*

Shall . . . prepare.—As to default, see sec. 320, *ante;* as to false entries, see sec. 318, *ante.*

Pauper lunatics.—Definition of "pauper" and "lunatics," sec. 341, *ante.*

Asylum.—Definition of, sec. 341, *ante.*

Form 22—post.

ib. (2).

(2) Within fifteen days after the list is prepared, the clerk shall lay a copy before the committee of visitors, and shall send a copy to the Commissioners, and to the clerk of each local authority to which the asylum belongs to be laid before the local authority.

Within fifteen days.—As to meanings of "within" and "days," see *ante* pp. 117 and 145.

Committee of visitors.—See sec. 169, *ante.*

Send to the Commissioners.—See note to r. 27 (4) (*a*), *ante.*

The clerk . . . authority.—Definition of, sec. 341, *ante.*

Asylum.—Definition of, sec. 341, *ante.*

Local authority.—Definition of, sec. 240, *ante.*

See notes to (1), *sup.*

ib. (3).

(3) The clerk of every asylum receiving private patients shall, on the first of January and the first of July in every year, prepare a list made up to those dates, containing the Christian names and surnames of all the private and criminal patients then in the asylum, according to the Form 23 in the Schedule; and shall, within fifteen days after the list is prepared, send a copy to the Commissioners; and shall,

within the same time, transmit to the clerk of each such local authority, to be laid before it, a certificate under his hand of the number of private and criminal patients of each sex. Rule 30.

See notes to (1) and (2), *sup.*
Private patients.—Definition of, sec. 341, *ante.*
And criminal.—These words are new.
Form 23—*post.*
Send a copy to.—See (2), *sup.*

30. The clerk to the committee of visitors of every asylum shall, within twenty-one days after their annual report has been laid before the local authority by the committee of visitors, transmit a copy to the Commissioners. Report of visiting committee to be sent to Commissioners. R.C. 1890, r. 26.

The clerk, etc.—See sec. 176, *ante.*
Committee of visitors.—See sec. 169, *ante.*
Asylum.—Definition of, sec. 341, *ante.*
Within twenty-one days.—As to meanings of "within" and "days," see *ante* pp. 117 and 145.
Annual report.—See sec. 190, *ante.*
Local authority.—Definition of, sec. 240, *ante.*
Transmit a copy, etc.—See note to r. 27 (4) (*a*), *ante.*

31. The medical superintendent of every asylum, the superintendent of every hospital, and the resident licensee of every licensed house receiving pauper lunatics shall, half-yearly on the first day of January and the first day of July, send to the guardians of every union a statement of the mental and bodily condition of every pauper lunatic chargeable to the union. Statement of condition of pauper lunatics. R.C. 1890, r. 27.

The medical superintendent.—Definition of, sec. 341 (manager), *ante.* In r. 27 of the R.C. 1890 the word "manager" was used.
The superintendent . . . house.—This clause is new (see notes to r. 22, *ante*).
On the first . . . July.—This is new.
Guardians.—Definition of, sec. 341, *ante.*
Union.—Definition of, sec. 341, *ante.*
Statement.—Wilful misstatement is a misdemeanour (sec. 317, subs. (2), *ante*). As to default in sending, see sec. 320, *ante.*
Pauper lunatic.—Definition of, sec. 341, *ante.*
Chargeable.—See sec. 286, *ante.*

32. (1) In the case of pauper lunatics not in an institution for lunatics, the medical officer of every district of a union and of every workhouse shall, within seven days after every thirty-first of March, thirtieth of June, thirtieth of September, and thirty-first of December, make a return of all such lunatics visited by him during the preceding quarter; or if there were no such lunatics within the district or workhouse of which he is medical officer, shall make a return to that effect. Quarterly return of pauper lunatics not in an institution for lunatics. R.C. 1890, r. 28 (1).

Rule 32 (1)-(3).

Pauper lunatics.—Definition of, sec. 341, *ante.*
Institution for lunatics.—Definition of, sec. 341. *ante.*
Medical officer.—Definition of, sec. 341, *ante.*
Union.—Definition of, sec. 341, *ante.*
Workhouse.—Definition of, sec. 341, *ante.*
Visited by him.—See sec. 202, *ante.* As to default in making such returns, see sec. 320, *ante.*

R.C. 1890, r. 28 (2).

(2) Such returns shall be in the Forms 24 and 25 in the Schedule, and shall, within the time aforesaid, be delivered or sent to the clerk to the guardians of the union to which the return relates.

Forms 24 and 25—post.
Guardians.—Definition of, sec. 341, *ante.*
See notes to (1), *sup.*

ib. (3).

(3) The clerk receiving the return shall, within two clear days after receipt thereof, make a copy thereof, and shall, within the same period, send the return to the Commissioners, and the copy to the clerk to the committee of visitors of the asylum for the county or borough in which the union for which he is clerk is wholly or partly situate.

See notes to (1) and (2), *sup.*
Two.—"Three" in r. 28 (3) of the R.C. 1890.
Clear days.—See note to r. 8 (3), *ante.*
Clerk to the committee of visitors.—See sec. 176, *ante.* As to committee, see sec. 169, *ante.*

Annual return by clerks to boards of guardians. R.C. 1890, r. 29.

33. The clerk of the board of guardians of every union shall, on the first of January in every year, or as soon after as possible, make out and sign a complete list or lists in the Form 26 in the Schedule, made up to that date, of all lunatics chargeable to the union, giving, when necessary, in a separate sheet, a list of the lunatics chargeable to each part of the union which is situate in the area of a different local authority, as defined by the Lunacy Act 1890, section 240; and shall, on or before the first of February following, send copies of the lists to the following authorities:—

(*a*) The Local Government Board;

(*b*) The Commissioners;

(*c*) The committee of visitors of the asylum of the county or borough, or each county or borough, in which the union is wholly or partly situate;

(*d*) The clerk of the local authority within the area whereof the union is wholly or partly situate, to be laid before the local authority.

Guardians.—Definition of, sec. 341, *ante.*
Union.—Definition of, sec. 341, *ante.*

Or lists.—These words are new.
Form 26—*post.*
Lunatics.—Definition of, sec. 341, *ante.*
Chargeable.—See sec. 286, *ante.*
Giving . . . section 240.—This clause is new (see sec. 240, *ante*).
(*b*) *The Commissioners.*—See note to r. 27 (4) (*a*), *ante.*
(*c*) *The committee of visitors.*—See sec. 169, *ante.*
Asylum.—Definition of, sec. 341, *ante.*
County.—Definition of, sec. 341, *ante.*
(*d*) *Clerk . . . authority.*—Definition of, sec. 341, *ante.*
Local authority.—Definition of, sec. 240, *ante.*

Entries and returns to be clear and distinct. R.C. 1890, r. 30.

34. All entries to be made under these Rules shall be made in a manner so clear and distinct as to admit of being easily referred to and extracted whenever the Commissioners shall so require, and all notices shall be sent on white paper of foolscap size.

All entries.—As to false entries, see sec. 318, *ante.*
All notices . . . size.—This is new.
As to sending notices, see note to r. 27 (4) (*a*), *sup.*

Returns and information to be furnished by managers. R.C. 1890, r. 31.

35. The manager of every institution for lunatics, and the clerk of every asylum, shall furnish to the Commissioners, at such times and in such form as they may from time to time prescribe, such annual and other returns and information of or in any way relating to the institution, or the patients of or boarders in the institution, as the Commissioners may, in their discretion, require.

Manager.—Definition of, sec. 341, *ante.*
Institution for lunatics.—Definition of, sec. 341, *ante.*
Shall furnish.—As to penalty for default, see sec. 320, *ante.* As to sending returns, etc., see note to r. 27 (4) (*a*), *ante.*
The clerk of every asylum.—These words are new (see sec. 276, subs. (1) (*a*), *ante*).
Asylum.—Definition of, sec. 341, *ante.*
The institution.—This is new.

Applications for licences. R.C. 1890 r. 32 (1).

36. (1) Every applicant for a licence for a house in substitution for a house already licensed shall, at least thirty clear days before a quarterly or other meeting of the Commissioners, or before a quarter or special sessions of the licensing justices, give notice of the application—

(*a*) If the house is within the immediate jurisdiction of the Commissioners, to the Commissioners;

(*b*) If elsewhere, to the clerk of the peace for the county or borough in which it is situate, and also to the Commissioners.

Every applicant . . . licensed.—The words "in substitution . . . licensed," are new, see sec. 207, subs (3), *ante.*
Thirty.—"Fourteen" under r. 23 (1) of the R.C. 1890.

Rule 36 (1)-(4).

Clear days.—See note to r. 8 (3), *ante.*

Quarterly or other meeting—See sec. 159, *ante.*

Quarter . . . sessions.—Definition of, sec. 341, *ante.* See sec. 209, *ante.*

Licensing justices.—See sec. 208, subs. (2), *ante.*

Notice.—As to contents of, see (2), *inf.*

(*a*) *The immediate jurisdiction.*—See sec. 208, subs. (1), *ante.*

(*b*) *Elsewhere.*—See sec. 208, subs. (2), *ante.*

County.—Definition of, sec. 341, *ante.*

And also to the Commissioners.—This is new. As to sending notices to Commissioners, see r. 27 (4) (*a*), *sup.*

R.C. 1890, r. 32 (2).

(2) The notice shall contain—

(*a*) The Christian name and surname, place of abode, and occupation of the proposed licensee;

(*b*) The Christian name and surname of the person who is to reside in the house; and a full description of the estate or interest therein of the proposed licensee.

(*b*) *The person who is to reside.*—See sec. 211, *ante.*

ib. (3).

(3) The applicant shall send with his notice the following documents:—

(*a*) A plan of the house and all buildings to be included in the licence, drawn upon a scale of eight feet to an inch, with a description of the situation of the house, and the length, breadth, and height of, and a reference by a figure or letter to, every room therein, distinguishing the rooms to be appropriated to patients from those to be occupied by the family and domestic servants of the resident licensee; also a plan of the drains and a statement as to the mode of disposal of the sewage, and as to the water supply;

(*b*) A statement of the quantity of land not covered by building annexed to the house, and appropriated to the exclusive use, exercise, and recreation of the patients, with a plan thereof drawn to the scale of 100 feet to an inch;

(*c*) A statement of the number of patients of each sex to be received, and of the means by which the sexes are to be kept apart.

The applicant . . . documents.—In r. 36 (3) of the R.C. 1890 the words "if the house has not been previously licensed" preceded this clause.

(*a*) *The house.*—In r. 36 (3) (*a*) of the R.C. 1890 the words were "all houses."

Also a plan . . . supply.—This is new. As to punishment for untrue statements, see sec. 214, *ante.*

ib. (4).

(4) The notice and accompanying documents when sent to a clerk of the peace shall by him be laid before the justices when they consider the application for the licence.

See notes to (1)-(3), *sup.*

Rule 37 (1), (2).

Rule 32 (5) of the R.C. 1890 added the following: "If a house not within the immediate jurisdiction of the Commissioners has not been previously licensed, copies of the notice and accompanying documents shall, at least thirty days before the quarter or special sessions at which the application is to be considered, be sent by the applicant to the Commissioners."

On renewal of licence, statement to be furnished of the number and class of patients detained. R.C. 1890, r. 33 (1).

37. (1) Every person applying for the renewal of a licence shall, at least fourteen clear days before a quarterly or other meeting of the Commissioners, or before a quarter or special sessions of the licensing justices, give notice, in the case of a house licensed by the justices, both to the Commissioners and to the clerk of the peace for the county or borough, and, in the case of a house licensed by the Commissioners, to the Commissioners, of the application for renewal, accompanying his notice with a statement signed by the applicant containing the names and number of the patients of each sex then detained in such house, and distinguishing between private and pauper patients.

The renewal of a licence.—See sec. 207, subs. (1), *ante.*

At least fourteen.—No time was specified in r. 33 (1) of the R.C. 1890.

Clear days.—See note to r. 8 (3), *ante.* As to meaning of "days," see *ante* p. 117.

A quarterly or other meeting.—See sec. 159, *ante.*

A quarterly . . . session.—Definition of, sec. 341, *ante.* See also sec. 209, *ante.*

The licensing justices.—See sec. 208, subs. (2), *ante.*

Notice.—This is new. As to sending notices to Commissioners, see note to r. 27 (4) (*a*), *ante.*

A house licensed by justices.—See sec. 208, subs. (2), *ante.*

County.—Definition of, sec. 341, *ante.*

Statement.—As to default in making, see sec. 320, *ante.* As to false entries, see sec. 318, *ante.*

Private and pauper patients.—Definitions of, sec. 341, *ante.*

ib. (2).

(2) Copies of all entries made since the last renewal of the licence by the visiting Commissioners in the visitors' book of a house licensed by justices shall be laid before the justices upon every application for a renewal of the licence.

See notes to (1), *sup.*

Entries.—See sec. 194, *ante.*

Visiting Commissioners.—See sec. 191, *ante.*

Visitors' book.—See r. 1 (1) (*a*), *ante.*

Notice of alterations and additions to licensed houses. R.C. 1890, r. 34 (1).

38. (1) Before any alteration or addition is made to, in, or about a licensed house, or its appurtenances, the licensee shall send notice in writing of the proposed alteration or addition to the Commissioners, and, in the case of a house licensed by justices of a county or borough, also to the clerk of the peace of the county or borough.

Rule 39 (1)-(3).

For definitions see notes to r. 37 (1), *sup.*

Any alteration or addition.—See sec. 213, *ante.*

Notice in writing.—All notices are to be sent on white paper of foolscap size (r. 34, *ante*); and see note to r. 27 (4) (*a*), *ante.*

R.C. 1890, r. 34 (2).

(2) Such notices shall be accompanied by full descriptions of the proposed alteration or addition, with plans drawn to a scale of eight feet to an inch.

See notes to (1), *sup.*

In r. 34 (3) of the R.C. 1890 the following was added: "Every clerk of the peace to whom a notice is given under this rule shall within three days after receiving the same send the notice, together with the accompanying description and plans, or copies thereof respectively, to the Commissioners."

Plans of hospitals. R.C. 1890, r. 35 (1).

39. (1) With every application for the registration of a hospital for the reception of lunatics the following plans shall be sent to the Commissioners:—

(*a*) A general plan, to the scale of 100 feet to an inch, of the land proposed to be occupied with the hospital, with a block plan of the buildings drawn thereon, and showing the positions and area of the exercise grounds, gardens, and roads of approach;

(*b*) Plans of the basement, ground, and every other, floor of the principal buildings and offices, and also of the roofs, with the dimensions of the rooms and the thicknesses of the walls;

(*c*) Elevations of the fronts and sides of the principal buildings and offices;

(*d*) Transverse and longitudinal sections sufficient to show the heights of the various rooms in the buildings;

(*e*) A general plan showing the courses of the drains and the manner in which the sewage will be disposed of.

The registration of a hospital.—See secs. 231 and 233, *ante.* Definition of "hospital," sec. 341, *ante.*

ib. (2).

(2) The plans (*b*) to (*e*) inclusive shall be drawn to a scale of eight feet to an inch.

ib. (3).

(3) There shall also be furnished with every application a concise description of the hospital buildings, with the number of patients and boarders to be received therein, and of the systems of heating, lighting, and ventilation adopted, and of the water supply; and the plans shall show the manner in which the various portions of the buildings are to be appropriated to the different classes and sexes of patients to be received.

Shall also be furnished.—As to default, see sec. 320, *ante.*
With the number . . . therein.—This is new.
As to boarders, see sec. 229, *ante.*
And of the water supply.—This is new.
The plans shall show.—Buildings not shown on plans are not to be used for accommodation of lunatics (sec. 233, *ante*).

Rule 40 (1), (2).

40. (1) Before any alteration or addition is made to, in, or about any hospital, the superintendent shall send notice in writing of the proposed alteration or addition to the Commissioners.

Notice of alterations and additions to hospitals. R.C. 1890, r. 36 (1).

Any alteration, etc.—See sec. 233, *ante.*
Hospital.—Definition of, sec. 341, *ante.*
In r. 36 (1) of the R.C. 1890 the words "whether registered after or before the date of these rules," were added.
Notice in writing.—See note to r. 38 (1), *ante;* and see note to r. 27 (4) (*a*), *ante.*

(2) Every such notice shall be accompanied by plans and descriptions similar to those specified in the last preceding Rule.

ib. (2).

See r. 39, *sup.*

41. The Commissioners may require the superintendent of any hospital to furnish, at the cost of the hospital, such plans of all or any of the buildings used for the purposes of the hospital as, being of the description hereinbefore specified, the Commissioners may think fit.

Hospitals already registered to furnish plans. R.C. 1890, r. 37.

Superintendent.—Definition of, sec. 341 (manager), *ante.*
Any hospital.—Rule 37 of the R.C. 1890 was expressly limited, as the marginal note still is limited, to hospitals already registered. The limitation is unnecessary.

42. The superintendent of every hospital shall within one calendar month next after the accounts of the hospital shall have been submitted to the Charity Commissioners, or have been audited, send to the Commissioners an abstract of the accounts in such form as the Commissioners shall from time to time prescribe. He shall also, within a month after its publication, send to them a printed copy of the annual report of the hospital.

Abstracts of hospital accounts to be sent to Commissioners. R.C. 1890, r. 38.

Superintendent.—Definition of, sec. 341 (manager), *ante.*
Hospital.—Definition of, sec. 341, *ante.*
Within.—See *ante* p. 117.
The accounts . . . prescribe.—See sec. 234, *ante.*
He shall also . . . hospital.—This is new.

43. These Rules shall come into operation on the first day of September one thousand eight hundred and ninety-five, on which day the Rules of the 29th of March 1890 shall cease to have effect.

The Rules of 1890 commenced on 1st May 1890.

THE SCHEDULE.

FORM 1.

Register of Patients.

	Date of last previous Admission, if any.	
	No. in Order of Admission.	
	Date of Admission.	
	Date of Reception Order.	
	Date of continuation of Reception Order.	
	Christian and Surname at Length.	
	Sex. M. / F.	
	Age.	
	Condition as to Marriage. Married. / Single. / Widowed.	
	Condition of Life, and previous Occupation.	
	Previous Place of Abode.	
	Union or County, or Borough to which chargeable.	
	By whose Authority sent.	
	Dates of Medical Certificates, and by whom signed.	
	Form of Mental Disorder.	
	Supposed Cause of Insanity.	
	Bodily Condition, and Name of Disease, if any.	
	Epileptic.	
	Congenital Idiot.	
	Duration of existing Attack. Years. / Months. / Weeks.	
	Number of previous Attacks.	
	Age on first Attack.	
	Date of Removal, Discharge, or Death.	
	Removed or Discharged. Recovered. / Relieved. / Not improved.	
	Died.	
	Observations.	

FORM 2.

Register of Removals, Discharges, and Deaths.

Date of Removal, Discharge, or Death.	Date of last Admission.	Number in Register of Patients.	Christian and Surname at Length.	Sex.		Discharged.						Removal, and where removed.				Died.		Assigned Cause of Death.	Whether Post-mortem made or not.	Age at Death.		Observations.
						Recovered.		Relieved.		Not improved.		Relieved.		Not improved.								
				M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.			M.	F.	

FORM 3.

Medical Journal to be kept at Asylums, Hospitals, and Licensed Houses.

Date.	Number of Patients.		Patients who are or since the last Entry have been in Seclusion, when, and for what Period, and Reasons.		Patients under Medical Treatment, and for what, if any, Bodily Disorder.		Deaths, Injuries, and Violence to Patients, since the last Entry.
	Males.	Females.	Males.	Females.	Males.	Females.	

FORM 4.

Medical Journal for Single Patients.

Date.	Mental Condition; what Evidence of Insanity? Any and what Change since last Visit.	Bodily Health and Condition.	Seclusion since last Visit; when and for how long.	Visits of Friends; date of Visit; name of Friend.	State of House and Furniture, Bed and Bedding. Supply and Condition of Wearing Apparel.	Is the Dietary proper? if not, state in what respect.	Employment, Exercise, and Amusements.

FORM 5.

Register of Mechanical Restraint.

Date.	Names of Patients.		Means of Restraint employed.	Duration in Hours.	Certificate of Medical Superintendent, or Medical Attendant, stating Grounds upon which the Restraint was employed.
	Male.	Female.			
					I certify that restraint was employed in this case on the following grounds :— (Signed) Medical Superintendent or Medical Attendant.

FORM 6.

Register of Voluntary Boarders.

Date of Reception into Institution.	Names, Occupation, and Residence of Boarders.		Term for which Residence is permitted.	Extended Term and Date of Consent to the Extension.	Names of Commissioners or Justices consenting to Reception, or Extension of Term, where such Consent necessary.	Reception, whether for Treatment, or as Relative or Friend of a Patient.	Date of Death or of leaving the Institution.
	Male.	Female.					

FORM 7.

[Name of Asylum, Hospital, *or* House.]

Post-mortem Notes.

Name and number in Register of Patients.
Sex, age, and previous occupation.
Date of admission.
Date of death.
Form of mental disorder { on admission. / at death.
Certified cause of death.
Case book. Vol. , page.
Date and hour of post-mortem examination.

Condition of body and external appearances, and whether or not bed-sores present.

Head.

Thorax (describe condition of ribs).

Abdomen.

Weights of Organs.

Microscopic appearances and any special notes.

(Signed)

[These headings may be added to and the spaces increased or diminished according to the judgment of superintendents.]

FORM 8.

[Name of Asylum, Hospital, *or* House.]

Notice of Admission.

Date of reception order, the day of .

I hereby give you notice that was admitted into this asylum [*or* hospital *or* house] as a pauper [*or* criminal] patient on the day of , and I hereby transmit a copy of the order and statement of particulars and medical certificates on which he [*or* she] was received.

Subjoined is a statement with respect to the mental and bodily condition of the patient.

(Signed)

Clerk, *or* Medical Superintendent, *or* Resident Licensee.

Dated the day of .

To the Commissioners in Lunacy
[*or as the case may be*].

Statement.

I have this day [*some day not less than two clear days, nor more than seven clear days, after the admission of the patient*] seen and examined the patient mentioned in the above notice, and hereby certify that with respect to mental state he [*or* she] [*describing it*] and with respect to bodily health and condition he [*or* she] [*describing it*].

Dated the day of

(Signed)

Medical Officer.

FORM 9.

[Name of Asylum, Hospital, *or* House.]

Notice of Admission.

Date of reception order, the day of .

I hereby give you notice that was admitted into this asylum [*or* hospital *or* house] as a private patient on the day of , and I transmit [a copy of the urgency order and medical certificate *or*] a copy of the order and medical certificates and of the petition and statement of particulars on which he [*or* she] was received.

A statement with respect to the mental and bodily condition of the above-named patient will be forwarded in due course.

(Signed)

Clerk, *or* Medical Superintendent *or* Resident Licensee.

Dated the day of .

To the Commissioners in Lunacy
[*or as the case may be*].

FORM 10.

[Name of Asylum, Hospital, *or* House.]

Medical Statement.

I have this day [*some day not less than two clear days, nor more than seven clear days after the admission of the patient*] seen and examined , admitted into this asylum [*or* hospital, *or* house] on the day of , and hereby certify that with respect to mental state he [*or* she] [*describing it*] and with respect to bodily health and condition he [*or* she] [*describing it*].

Dated the day of .

(Signed)

Medical Officer.

To the Commissioners in Lunacy
[*or as the case may be*].

FORM 11.

[Name of Asylum, Hospital, *or* House.]

Notice of Admission of Boarder.

I hereby give you notice that
was received into the hospital [*or* house] on the day of
as a voluntary boarder, for treatment
[*or* as a relative or friend of a patient].

(Signed)

Medical Superintendent, *or* Resident Licensee.

Dated the day of .

To the Commissioners in Lunacy.

FORM 12.

[Name of Asylum *or* Hospital.]

Notice of Transfer from the Criminal to the Pauper Class.

Date of reception order, the day of .

I hereby give you notice that , who was received into this asylum [*or* hospital] as a criminal lunatic on the
was on the transferred to the pauper class, and I herewith transmit a copy of the justice's order on which he is detained.

Subjoined is a statement with respect to the mental and bodily condition of the patient.

(Signed)

Clerk or Superintendent.

Dated the day of .

To the Commissioners in Lunacy.

Statement.

I have this day [*some day not less than two clear days, nor more than seven clear days, after the patient has ceased to be a criminal*] seen and examined the patient mentioned in the above notice, and hereby certify that with respect to mental state he [*or* she] [*describing it*] and with respect to bodily health and condition he [*or* she] [*describing it*].

Dated the day of .

(Signed)

Medical Officer.

FORM 13.

[Name of Asylum, Hospital, *or* House.]

Report as to Private Patient.

(To be sent at the expiration of *one calendar month after* reception.)

I have this day seen and examined , received here on the day of , and report that with respect to mental condition he is , and that with respect to bodily condition he is .

Dated the day of .

(Signed)

Medical Officer, *or* Medical Attendant.

To the Commissioners in Lunacy.

FORM 14.

[Name of Asylum, Hospital, *or* House.]

Notice of Removal.

Date of reception order, the day of .

I hereby give you notice that , a private [*or* pauper *or* criminal] patient received into this asylum [*or* hospital *or* licensed house *or* house] on the day of , was, on the day of , removed to relieved [*or* not improved] by the authority of

(Signed)

Clerk, *or* Superintendent, *or* Resident Licensee, *or* the person having charge of the said lunatic as a single patient.

Dated the day of .

To the Commissioners in Lunacy [*or as the case may be*].

FORM 15.

[Name of Asylum, Hospital, *or* House.]

Notice of Discharge.

Date of reception order, the day of .

I hereby give you notice that , a private [*or* pauper, *or* criminal] patient, received into this asylum [*or* hospital

or licensed house *or* house] on the day of , was discharged therefrom recovered [*or* relieved *or* not improved] on the day of , by the authority of .

(Signed) Clerk, *or* Superintendent, *or* Resident Licensee, *or* the person having charge of the said lunatic as a single patient.

Dated the day of .

To the Commissioners in Lunacy
[*or as the case may be*].

FORM 16.

[Name of Asylum, Hospital, *or* House.]

Notice of Escape.

I hereby give you notice that , a private [*or* pauper *or* criminal] patient received into this asylum [*or* hospital *or* licensed house *or* house] on the day of , escaped therefrom on the day of .

The state of mind of the patient at the time of his escape was as follows: [*describe it*].

The circumstances and manner of the escape were as follows: [*state them*].

(Signed) Clerk, *or* Superintendent, *or* Resident Licensee, *or* the person having charge of the said lunatic as a single patient.

Dated the day of .

To the Commissioners in Lunacy
[*or as the case may be*].

FORM 17.

[Name of Asylum, Hospital, *or* House.]

Notice of Recapture.

I hereby give you notice that , a private [*or* pauper *or* criminal] patient who was received into this asylum [*or* hospital *or* licensed house *or* house] on the day of , and escaped therefrom on the day of , was on the day of recaptured under the following circumstances: [*state them*].

(Signed) Clerk, *or* Superintendent, *or* Resident Licensee, *or* the person having charge of the said lunatic as a single patient.

Dated the day of .

To the Commissioners in Lunacy
[*or as the case may be*].

FORM 18.

[Name of Asylum, Hospital, *or* House.]

Notice of Transfer from Private to Pauper Class or vice versâ.

I hereby give you notice that admitted into this asylum [hospital *or* house] as a private [*or* pauper] patient on the day of , was on the day of transferred to the pauper [*or* private] class.

Dated the day of .

(Signed)

Clerk, *or* Superintendent, *or* Resident Licensee.

To the Commissioners in Lunacy.

FORM 19.

[Name of Asylum, Hospital, *or* House.]

Special Reports and *Certificates* as to Patients admitted under Orders dated Three Months or more prior to 1st May 1890.

(Lunacy Act 1890, sec. 38 ; Lunacy Act 1891, sec. 7.)

Note.—Male and female patients must be returned in separate lists. The names must be in alphabetical order of the initial letters, and those of each initial in order of date of admission.

Date of Admission.	Dates of Reception Orders.	Names of Patients.	Report as to Mental Condition.	Report as to Bodily Condition.

I certify that all the patients named on this sheet are still of unsound mind, and proper persons to be detained under care and treatment.

(Signed)

Dated the day of .

Medical Officer.

To the Commissioners in Lunacy.

FORM 20.

(Private or Pauper).

[Name of Asylum, Hospital, *or* House.]

Special Report and Certificate.

(Lunacy Act 1890, sec. 38 ; Lunacy Act 1891, sec. 7.)

*(For use by Commissioners in Lunacy only.)

No.*
Name of patient.
Date of admission.
Date of reception order.

I have this day seen and examined the above-named patient, and beg to report that with regard to mental condition, he [*or* she] is
and with regard to bodily condition, he [*or* she] is
and I hereby certify that he [*or* she] is still of unsound mind, and a proper person to be detained under care and treatment.

(Signed)

Medical Officer.

Dated the day of .

To the Commissioners in Lunacy.

FORM 21.

[Name of Asylum, Hospital, *or* House.]

Notice of Death.

Date of reception order, the day of .

I hereby give you notice that , a private [*or* pauper] patient received into this asylum [*or* hospital *or* house] on the day of , died therein on the day of

(Signed)

Clerk of Asylum *or* Medical Officer of Hospital, *or* House, *or* Medical Attendant of the patient.

Dated the day of .

To the Commissioners in Lunacy [*or as the case may be*].

Statement respecting the above-named Patient.

Name.
Sex and age.
Married, single, or widowed.
Profession or occupation.
Place of abode immediately before being placed under care and treatment (if known).

Apparent cause of death.
Whether or not ascertained by post-mortem examination.
Time and any unusual circumstances attending the death; also a description of any injuries known to exist at time of death or found subsequently on body of deceased.
Duration of disease of which patient died.
Names and description of persons present at the death.
Whether or not mechanical restraint was applied to deceased within seven days previously to death, with its character and duration if so applied.

(Signed)

Medical Officer of Asylum, *or* Hospital, *or* House, *or* Medical Attendant of patient.

FORM 22.

NAMES of all [male] *or* [female], *as the case may be*, Pauper Lunatics in the Asylum at for the county [*or* borough, *etc. as the case may be*], of on the 1st day of January or July.

Note.—Male and female patients must be returned in separate lists. The names must be in alphabetical order of the initial letters, and those of each initial in order of date of admission.

Names of those chargeable to a Union.	Name of Union to which chargeable.	Date of Admission.	Names of those chargeable exclusively to County or Borough Fund.	Date of Admission.	Names of those chargeable to Visitors of other Asylums.	Date of Admission.

This is a correct list.

(Signed)

Clerk of the Asylum.

Dated the day of

FORM 23.

NAMES of all Private and Criminal Lunatics in the Asylum at , for the county [*or* borough, etc., *as the case may be*] of , on the day of .

Note.—Male and female patients must be returned in separate lists. The names must be in alphabetical order of the initial letters, and those of each initial in order of date of admission.

Names of Private Patients.	Date of Admission.	Names of Criminal Patients.	Date of Admission.

This is a correct list.

(Signed)

Clerk of the Asylum.

Dated the day of .

FORM 24.

County of
Union [*or* Parish] of
District of

QUARTERLY LIST OF LUNATIC PAUPERS within the district of union of [*or* the parish of], in the county or borough of , not in any asylum, hospital, or licensed house.

Name.	Sex.	Age.	Form of Mental Disorder.	Duration of present Attack of Insanity, and if Idiotic, whether or not from Birth.	Resident in Workhouse.	Non-resident in Workhouse, where and with whom resident.	Date of Visit.	In what State as to Bodily and Mental Condition, Accommodation, and General Care and Management.	If Mechanically restrained during the Quarter, why, and by what Means, and how often and for how long.

I declare that I have personally examined the several persons whose names are specified in the above list on the days set opposite their names; and I certify, first, with respect to those appearing by the above list to be in the workhouse, that the accommodation in the workhouse is sufficient for their reception, and that they are all [*or*, all except] proper patients to be kept in the workhouse; and, secondly, with respect to those appearing by the above list to be resident elsewhere than in the workhouse, that they are all [*or*, all except] properly taken care of, and may properly remain out of an asylum.

I declare that the persons in the above list are, to the best of my knowledge, the only pauper lunatics in the district of the union of [*or* in the parish of] who are not in an asylum, hospital, or licensed house.

(Signed) *A.B.*,

Medical Officer of the district of the union [*or* parish] of .

Dated the day of .

FORM 25.

County of

Union [*or* Parish] of

District of

I declare that to the best of my belief there has not, during the quarter ending the day of , been any pauper lunatic residing in the district of the union of [*or* in the parish of], who is not in an asylum, hospital, or licensed house.

(Signed)

Medical Officer.

Dated the day of .

FORM 26.

Form of Annual Return.

A TRUE LIST of all LUNATICS chargeable on the 1st January to the Union of [*or* Parish of] or to such part thereof respectively as is situate (*i.e.* having their place of settlement) within the Administrative County of or the County Borough of or the Borough (within the meaning of or as modified by Lunacy Act 1890, secs. 240, 246, Schedule iv., and Lunacy Act 1891, sec. 13, and Schedule) of , specifying the Names, Sex, and Age of each, and where detained or residing.

N.B.—A separate sheet should be used for each part of the union or parish which is situate in a different county or borough.

Name.	Age.	Sex.	Where maintained.					Weekly Cost of Maintenance and Clothing.	Observations.
			In any and what County or Borough Asylum, including Patients out on Trial, but excluding those boarded out.	Boarded out with Relatives or Friends under the Lunacy Act 1890, section 57.	In any and what Hospital or Licensed House, including Patients out on Trial, or leave.	In the Workhouse.	Residing with Relatives or others, where, and with whom, by Name.		

Signed by me the day of .

A.B.

Clerk to the Board of Guardians of the said Union.

Sealed with the common seal of the Commissioners in Lunacy by order of the Board in the presence of

G. HAROLD URMSON,
Secretary.

19 Whitehall Place, London, S.W.,
the 26th day of June 1895.

L. S.

Approved, HERSCHELL, *C.*

B

IDIOTS ACT 1886

(49 & 50 Vict. c. 25).

An Act for giving facilities for the care, education, and training of Idiots and Imbeciles. [25th June 1886.]

Whereas it is expedient to make provision for the admission into hospitals, institutions, and licensed houses of idiots and imbeciles, and for their care, education, and training therein:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Origin of enactment.

Whereas it is expedient.—The provisions of this Bill were included in the Lunacy Act of 1885, but were embodied in a separate measure in accordance with a generally entertained desire.

Hospitals.—See definition of, sec. 17, *post*; and definition of "hospital" in sec. 341 of the Lunacy Act 1890, *ante*, of which the definition in sec. 17 of this Act is an adaptation. As to registration of, see sec. 7, *post*.

Institution.—See definition of, sec. 17, *post*; and cp. with definition of "institution for lunatics" in sec. 341 of the Lunacy Act 1890, *ante*, of which the definition in sec. 17 of this Act is an adaptation. As to registration of, see sec. 7, *post*.

Licensed houses.—Definition of, sec. 17, *post*. As to registration of, see sec. 7, *post*.

Idiots and imbeciles.—As to definition of, for purposes of this Act, see sec. 17, *post*. For the purposes of the Lunacy Act 1890, lunatic includes idiot (sec. 341 of the Act of 1890, *ante*). *Semble*, that imbecility could be brought within sec. 116, subs. (1) (*d*) of the Act of 1890, *ante*, for the purposes of the part of the statute dealing with management and administration—as incapacity "through mental infirmity arising from disease." As to the terms idiot and imbecile, see *ante*, pp. 2 and 4.

Semble, imbecility within sec. 116, subs. (1) (*d*) of Act of 1890.

Sec. 1.

Short title.

1. This Act may be cited as the Idiots Act 1886.

Extent of Act.

2. This Act shall not extend to Scotland or Ireland.

Sec. 3.

Commencement.

3. This Act shall commence from and immediately after the thirty-first day of December one thousand eight hundred and eighty-six.

From and immediately after, i.e. on 1st January 1887.

Hospitals, institutions, and licensed houses for idiots and imbeciles.

4. An idiot or imbecile from birth or from an early age may, if under age, be placed by his parents or guardians or by any person undertaking and performing towards him the duty of a parent or guardian, and may lawfully be received into, and until of full age detained in, any hospital, institution, or licensed house, registered under this Act for the care, education, and training of idiots or imbeciles upon the certificate in writing of a duly qualified medical practitioner in the Form 1 in the Schedule that the person to whom such certificate relates is an idiot or imbecile, capable of receiving benefit from such hospital, institution, or licensed house, accompanied by a statement in the Form 2 in the Schedule signed by the parent or guardian of the idiot or imbecile, or the person undertaking or performing towards him the duty of a parent or guardian.

Idiot.—Definition of, sec. 17, *post*, and see note to preamble, *sup.*

Imbecile.—Definition of, sec. 17, *post*, and see note to preamble, *sup.*

Or from an early age.—These words of course relate to imbecile alone.

If under age . . . guardian.—See the provisions of the Guardianship of Infants Act 1886 (49 and 50 Vict. c. 27).

Lawfully received.—The provisions of the Act of 1890 with reference to reception orders, etc., do not apply to this Act (sec. 11, *post*), and the person receiving an idiot or imbecile under this Act does not come within sec. 330 of the Act of 1890, *ante*. But the Courts have inherent jurisdiction to stay frivolous actions (see notes to sec. 330, *ante*).

Until of full age.—As to retention or admission after full age, see sec. 5, *post*.

Hospital.—See sec. 17, *post*, and note to preamble, *ante*.

Institution.—See sec. 17, *post*, and note to preamble, *ante*.

Licensed house.—See sec. 17, *post*, and note to preamble, *ante*.

Registered under this Act.—As to registration, see sec. 7, *post*.

Certificate.—See form of, Schedule, Form 1, *post*.

Duly qualified medical practitioner.—See definition of, sec. 341 of the Lunacy Act 1890, *ante*. A medical practitioner certifying under this Act is not within the protection of sec. 330 of the Lunacy Act 1890, *ante*. But see note to "lawfully received," *sup.* *Semble*, he must be in actual practice. See form of certificate, Schedule, Form 1, *post*; and see sec. 14, *post*.

Statement, etc.—See Form 2, Schedule, *post*. As to interpretation of such statement, see note to sec. 4, subs. (2) of the Lunacy Act 1890, *ante*.

Retention and admission of idiots and imbeciles after full age.

5. Any idiot or imbecile who has while under age been received under this Act into any hospital, institution, or licensed house, registered under this Act, may, with the consent in writing of the Commissioners in Lunacy, be retained therein after he is of full age, and an idiot or imbecile from birth or from an early age may be received

into any hospital, institution, or licensed house, registered under this Act after he is of full age upon the certificate in writing of a duly qualified medical practitioner in the Form One in the Schedule, accompanied by a statement in the Form Two in the Schedule signed by the parent or guardian of the idiot or imbecile, or the person undertaking or performing towards him the duty of a parent or guardian.

Idiot or imbecile.—Definitions of, sec. 17, *post;* and see note to preamble, *ante.*

Under age.—See sec. 4, *sup.*

Hospital . . . licensed house.—See sec. 17, *post*, and note to preamble, *ante.*

Registered.—See sec. 7, *post.*

Commissioners in Lunacy.—Definition of, sec. 17, *post.* See as to, secs. 150-162 of the Act of 1890, *ante.*

Certificate . . . guardian.—See notes to sec. 4. *sup.*

Order of discharge by Commissioners in Lunacy.

6. The Commissioners may at any time, by order, direct any person of full age retained in any hospital, institution, or licensed house, registered under this Act, to be discharged therefrom, and such order shall specify the reason or reasons for such discharge and the date thereof.

The Commissioners.—See note to sec. 5, *sup.;* and see sec. 17, *post.*

Order must be under seal.

Order.—Semble, the order must be under the seal of the Commission (cp. sec. 152, subs. (1) of the Lunacy Act 1890).

Any person of full age.—Whether originally admitted when under age or not.

Hospital . . . house.—See sec. 17, *post*, and note to preamble, *ante.*

Registered.—See sec. 7, *post.*

Discharged.—As to discharge of lunatics by Commissioners, see secs. 75, 76 of the Lunacy Act 1890, *ante.*

Registration of hospitals, institutions, and licensed houses under this Act.

7. The managing committee or the principal officer of every hospital, institution, or licensed house, in which idiots or imbeciles are intended to be received under this Act shall apply to the Commissioners to have the hospital, institution, or licensed house registered in the office of the Commissioners, and the Commissioners, if satisfied upon inquiry that the hospital, institution, or licensed house is a proper one to be registered, shall issue a certificate of registration accordingly; and no idiot or imbecile shall be received into any hospital, institution, or licensed house, under this Act, until the same hospital, institution, or licensed house has been duly registered.

Managing committee . . . house.—As to, of hospital, see secs. 235-36 of the Lunacy Act 1890, *ante.* As to management of licensed houses, see sec. 226 of the Act of 1890, *ante.* As to principal officers of licensed houses and hospitals, see secs. 226 and 230, *ante.* As to existing institutions, see sec. 8 of this Act, *inf.* As to definitions, see sec. 17, *post.*

Sec. 8.

Idiots or imbeciles.—See definition of, sec. 17, *post*, and note to preamble, *ante*.

The Commissioners.—See note to sec. 5, *ante*.

Office of Commissioners in Lunacy.

The office of the Commissioners.—The office of the Commissioners is at 19 Whitehall Place, London, S.W. Applications should be directed to

THE SECRETARY,
Commissioners in Lunacy,
19 Whitehall Place,
London, S.W.,

and should be marked on the left-hand upper corner, "Idiots Act 1886."[1]

Shall be received.—Reception of a patient before registration is punishable as a common law misdemeanour with fine and imprisonment. See note to sec. 7, subs. (4) of the Lunacy Act 1890, *ante* p. 101.

Provision for existing hospitals, institutions, and licensed houses for idiots or imbeciles.

8. Any hospital, institution, or licensed house, which at the passing of this Act is devoted exclusively to the care, education, and training of idiots or imbeciles, may be registered under this Act, and all idiots and imbeciles lawfully retained therein at the passing of this Act may continue to be so retained without further certification.

Hospital . . . house.—See sec. 17, *post*, for definitions, and note to preamble, *ante*.

The passing of this Act, i.e. on 25th June 1886.—The Act came into operation on 1st January 1887 (see sec. 3, *ante*).

Idiots or imbeciles.—See definitions in sec. 17, *post*, and note to preamble, *ante*.

Notice of reception to be sent to Commissioners in Lunacy.

9. When any idiot or imbecile is first received into a hospital, institution, or licensed house, registered under this Act, the superintendent or principal officer thereof shall, within fourteen days, certify in writing under his hand to the Commissioners in the Form Three in the Schedule the fact and time of his reception, specifying his name and age and the names and addresses of the persons placing him in such hospital, institution, or licensed house, and that he is alleged to be capable of deriving benefit from the treatment to be received therein.

Idiot or imbecile.—See sec. 17, *post*, and note to preamble.

First received.—An idiot or imbecile admitted while under age can only be retained after full age with consent of the Commissioners (see sec. 5, *ante*).

Hospital . . . house.—See definitions in sec. 17, *post*, and note to preamble, *ante*.

Superintendent, or principal officer.—As to superintendent of hospitals, see sec. 230 of the Lunacy Act 1890, *ante*. As to licensed houses, see sec. 226, *ib.*, *ante*. As to superannuation of officers, see sec. 16, *post*.

"Within fourteen days."

Within fourteen days.—There is no definition of "days" in the Act. It is conceived, however, that the fourteen days would be reckoned exclusively of the day of reception, and inclusively of the last day. See Rules in

[1] 41st Report of Commissioners in Lunacy, Appx. P, p. 371.

Sec. 10.

Lunacy 1892, rr. 6 and 7, *ante*, which are not, however, directly applicable to the case, and *ante* p. 145. The fourteen days[1] would, it is thought, in conformity with the general rule of law,[2] be reckoned consecutively.

Certify.—See Form 3, Schedule, *post.* As to consequences of default, see sec. 320 of the Lunacy Act 1890.

The Commissioners.—See note to secs. 5 and 7, *ante.*

Notice of death or discharge.

10. When any idiot or imbecile dies in any hospital, institution, or licensed house, registered under this Act, or is discharged therefrom, the superintendent or principal officer thereof shall forthwith notify in writing such death or discharge to the Commissioners.

Idiot or imbecile.—See definitions of in sec. 17, and note to preamble, *ante.*

Hospital . . . house.—See definitions of in sec. 17, and note to preamble, *ante.*

Registered.—See sec. 7, *ante.*

Discharged.—As to discharge by Commissioners, see sec. 6, *ante.*

Superintendent or principal officer.—See sec. 9, *ante;* and as to superannuation of, see sec. 16, *post.*

Notify.—As to consequences of default, see sec. 320 of the Lunacy Act 1890, *ante.*

The Commissioners.—See notes to secs. 5 and 7, *ante*, and definition of in sec. 17, *post.*

Certain provisions of Lunacy Acts not to apply to this Act.

11. The provisions of any Act relating to the registration and regulation of hospitals, asylums, and licensed houses for the reception of lunatics, to the orders, certificates, or reports necessary for the reception, detention, or treatment of lunatics, and to the care, treatment, and visitation of lunatics, and the books to be kept and the reports to be made concerning lunatics respectively, shall not apply to any hospital, institution, or licensed house registered under this Act, or to any idiot or imbecile received or to be received therein under the provisions of this Act.

Object of Act.

The provisions of any Act.—The object of the Act is to sanction the use in places registered under it of simple forms of certificates, and to supersede the registers and records prescribed by the Lunacy Acts, which are considered unnecessary where the patients kept are idiots or imbeciles capable of receiving benefit as above mentioned.[3]

The registration and regulation of hospitals.—See secs. 230, 231, 237 of the Lunacy Act 1890, *ante;* of asylums, see sec. 275, *ib., ante;* of licensed houses, see sec. 226, *ib., ante.* As to registration under this Act, see sec. 7, *ante.*

Lunatics.—Definition of, sec. 17, *post.*

The orders, certificates, etc.—See secs. 4-38 of the Lunacy Act 1890, *ante.* As to orders and certificates under this Act, see secs. 4 and 6, *ante.*

The care, treatment.—See secs. 39-89 of the Lunacy Act 1890, *ante.*

[1] Rule 5 of the R.L. 1892, *ante*, provides for the exclusion of Sunday, Christmas Day, and Good Friday, in the case of limited time, less than six days.

[2] *Brown* v. *Johnson*, 1842, Car. & M. 444, per Alderson, B., and see *ante* p. 145.

[3] 41st Report of Commissioners in Lunacy, Appx. P, p. 371.

Sec. 12.

Visitation.—See secs. 183-206 of the Lunacy Act 1890, *ante.*

As to visitation under this Act, see sec. 12, *inf.*

The books . . . reports.—See Rules of Commissioners in Lunacy 1895, *ante.* As to books under this Act, see sec. 13, *post.*

Hospital . . . house.—See sec. 17, *post.*

Registered.—See sec. 7, *ante.*

Idiot or imbecile.—See definition of in sec. 17, *post*, and note to preamble, *ante.*

The Lunacy Acts otherwise apply to idiots, see sec. 341 of the Act of 1890, definition of "lunatic," *ante.* As to imbeciles, see note to preamble, *ante.*

Inspection by Commissioners.

12. The Commissioners shall at least once in every twelve months visit and inspect every hospital, institution, and licensed house, registered under this Act, and all the children and other persons under treatment therein.

The Commissioners.—See note to sec. 5, *ante*, and sec. 17, *post.*

At least once.—As to visitation by Commissioners under Lunacy Act 1890, see secs. 187-206 of that statute, *ante.*

"Month."

Months.—Calendar month (see Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3).

Hospital . . . house.—See definitions of, sec. 17, *post*, and note to preamble, *ante.*

Registered.—See sec. 7, *ante.*

Medical journal to be kept.

13. A medical journal shall be kept in every hospital, institution, and licensed house, registered under this Act, in such form as the Commissioners may from time to time direct.

Medical journal.—As to medical journal, see Rules of Commissioners in Lunacy 1895, r. 1 (1) (*d*), *ante.*

Hospital . . . house.—See definitions of, sec. 17, *post*, and note to preamble, *ante.*

Registered.—See sec. 7, *ante.*

Residence of medical practitioner.

14. In the case of any hospital, institution, or licensed house, registered under this Act, the Commissioners may by order in writing direct that a duly qualified medical practitioner shall reside therein.

Hospital . . . house.—See definitions of, sec. 17, *post*, and note to preamble, *ante.*

Registered.—See sec. 7, *ante.*

Order should be under seal. Query whether practitioner must be in actual practice.

The Commissioners.—See note to sec 5, *ante*, and sec. 17, *post.*

By order.—*Semble*, it should be under seal (see sec. 152, subs. (1) of the Lunacy Act 1890, *ante*).

Duly qualified medical practitioner.—See definition of, sec. 341 of the Lunacy Act 1890, *ante.* *Semble*, it is not necessary that he should be in actual practice at the time of his appointment (see note to sec. 4, *ante*). As to superannuation of, see sec. 16, *post.*

Sec. 15.

Grants of money to guardians of the poor.

15. Nothing in this Act shall operate to deprive the guardians of the poor of any union of the power of sending pauper idiots or imbeciles to hospitals, institutions, and licensed houses, registered under this Act, or from receiving in respect of such idiots or imbeciles such sums of money as shall from time to time be granted by Parliament towards the maintenance and care of pauper lunatics, as if the same idiots and imbeciles were pauper lunatics.

Guardians.—Definition of, sec. 341 of the Lunacy Act 1890, *ante.*

Union.—Definition of, sec. 341 of the Lunacy Act 1890, *ante.*

Poor Law Amendment Act 1868, sec. 13.

The power, etc.—By section 13 of the Poor Law Amendment Act 1868, 31 & 32 Vict. c. 122, it is enacted that the guardians of any union or parish may, with the consent of the [Local Government] Board, send an idiotic pauper to an asylum or establishment for the reception and relief of idiots maintained at the charge of the county rate or by public subscription, and they may, with the like consent, send any idiotic, imbecile, or insane pauper who may lawfully be detained in a workhouse to the workhouse of any other union or parish, with the consent of the guardians of such last-mentioned union or parish, and pay the cost of the maintenance, lodging, and clothing of such pauper in the asylum, establishment, or workhouse, as well as the cost of his conveyance thereto or his removal therefrom, and the expenses of his burial when necessary.

Pauper.—Definition of, sec. 341 of the Lunacy Act 1890, *ante.*

Idiots or imbeciles.—See definitions of, sec. 17, *post*, and note to preamble, *ante.*

Hospitals . . . houses.—See definitions of, sec. 17, *post.*

Registered.—See sec. 7, *ante.*

Such sums.—As to the sums granted by Parliament towards the maintenance of pauper lunatics, see section 24, subss. (2) (*f*) (*g*), and (5) of the Local Government Act 1888 (51 & 52 Vict. c. 41).

Lunatics.—Definition of, sec. 17, *post.*

Power to grant superannuation allowance.

16. The committee of management of any hospital, institution, or licensed house, registered under this Act, may grant to any officer or servant who is incapacitated by confirmed illness, age, or infirmity, or who has been an officer or servant in the hospital, institution, or house, for not less than fifteen years and is not less than fifty years old, such superannuation allowance, not exceeding two-thirds of the salary, with the value of the lodgings, rations, or other allowances enjoyed by the superannuated person, as the committee think proper.

Committee of management.—See note to sec. 7, *ante.*

Hospital . . . house.—See definitions of in sec. 17, *post.*

Registered.—See sec. 7, *ante.*

"Officer or servant."

Officer or servant . . . proper.—See sec. 235 of the Lunacy Act 1890, and notes thereon, *ante.*

Definition.

17. In this Act, if not inconsistent with the context—

Commissioners.

"Commissioners" means the Commissioners in Lunacy for the time being:

Sec. 17.

Idiots or imbeciles.

"Idiots" or "imbeciles" do not include lunatics:

Lunatic.

"Lunatic" does not mean or include idiot or imbecile:

Hospital and institution.

"Hospital" and "institution" mean any hospital or institution or part of a hospital or institution (not being an asylum for lunatics) wherein idiots and imbeciles are received and supported wholly or partly by voluntary contributions, or by any charitable bequest or gift, or by applying the excess of payments of some patients for or towards the support, provision, or benefit of other patients:

Licensed house.

"Licensed house" means any house licensed by the Commissioners in Lunacy, or by the justices of any county or borough, for the reception, care, education, and training of idiots and imbeciles.

Commissioners.—And see sec. 341 of the Lunacy Act 1890, *ante*.

Idiots or imbeciles.—See note to preamble, *ante*.

Lunatic.—*Aliter*, for the purposes of the Lunacy Act 1890, see sec. 341, *post*, as to idiots. And, *semble*, imbeciles would fall within sec. 116, subs. (1) (*d*) of the Act of 1890, *ante* (for purposes of management and administration) as incapable "through mental infirmity arising from disease."

Hospital . . . institution.—These definitions are adapted, *mutatis mutandis*, from the corresponding definitions in sec. 341 of the Lunacy Act 1890 (see *ante*).

Any house licensed by the Commissioners.—See sec. 208 of the Lunacy Act 1890, *ante*.

Justices.—See secs. 208 and 210 of the Lunacy Act 1890, *ante*.

County.—Definition of, sec. 341 of the Lunacy Act 1890, *ante*.

THE SCHEDULE.

Form 1.

Form of Medical Certificate.[1]

I, the undersigned *A.B.*, a person registered under the Medical Act 1858, and in the actual practice of the medical profession,[2] certify that I have carefully examined *C.D.*, an infant[3] [*or* of full age],[4] now residing at , and that I am of opinion that the said *C.D.* is an idiot [*or* has been imbecile from birth, *or* for years past, *or* from an early age], and is capable of receiving benefit from [the institution (describing it)], registered under the Idiots Act 1886.[5]

(Signed)

Dated (full postal address).

[1] See secs. 5 and 6, *ante*.
[2] See note to "duly qualified," etc. in sec. 5, *ante*.
[3] See sec. 5, *ante*.
[4] See sec. 6, *ante*.
[5] See secs. 5 and 6, *ante*.

FORM 2.

Form of Statement to accompany Medical Certificate.[1]

[If any particulars in this statement be not known, the fact to be so stated.][2]

Name of patient, with Christian name at length.
Sex and age.
When and where previously under care and treatment.
In any asylum or institution.
Whether subject to epilepsy.
Whether dangerous to others.[3]

I certify that to the best of my knowledge the above particulars are correctly stated.

(Signed) Name and full postal address.

[To be signed by the parent or guardian of the idiot or imbecile, or the person undertaking and performing towards him the duty of a parent or guardian.]

FORM 3.

Form of Certificate of Reception.[4]

I hereby certify that aged
was admitted into
on the day of 18 , on the request of
of
and of
and that he [*or* she] is alleged to be capable of deriving benefit from the treatment he [*or* she] will receive herein.

A.B.
Superintendent or
Principal Officer.

Dated this day of 18

To the Commissioners in Lunacy.

[1] See secs. 5 and 6, *ante*.
[2] As to construction of particulars, see note to sec. 5 of Act of 1890, *ante*.
[3] As to apprehension of dangerous idiot likely to commit indictable crime, see sec. 2 of Criminal Lunatics Act 1838 (1 & 2 Vict. c. 14), *post*.
[4] See sec. 9, *ante*.

C

LUNACY (VACATING OF SEATS) ACT 1886

An Act to amend the Law in regard to the Vacating of Seats in the House of Commons (49 Vict. c. 16). [10th May 1886.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the authority of the same, as follows:

Sec. 1.

Short title of Act.

1. This Act may for all purposes be cited as the Lunacy (Vacating of Seats) Act 1886.

Need for measure.

In introducing this measure into Parliament Lord Balfour of Burleigh stated that there was then no provision in the law by which the seat of a member who might be afflicted with lunacy could be vacated.[1]

Idiocy or lunacy disqualification. Vacation of seat, when. Procedure for vacating seat of member of House of Commons received, etc., as a lunatic into an asylum, etc.

Idiots or lunatics (except in lucid intervals), however, have always been ineligible for election to Parliament,[2] and the seat of a lunatic could be declared vacant,[3] at least if his lunacy were incurable.[4]

2. From and after the passing of this Act, if a member of the House of Commons is received, or committed into, or detained in any asylum, house, or other place as a lunatic, the following provisions shall have effect; that is to say,

(i.) It shall be the duty of the court, judge, magistrate, or person under or upon whose order, and of every medical person or practitioner upon whose certificate such member has been so received, committed, or detained, and of every superintendent, officer, proprietor, or other person having the chief charge of such asylum, house, or other place as aforesaid, as soon as may be, to certify such reception, committal, or detention to the Speaker of the House of Commons.

[1] Hansard, 3rd ser. vol. 304, p. 1032.

[2] Whitlock's notes on the King's writ, 461.

[3] *Grampound case*, 1566, D'Ewes Jour. 126. In the Commons' Journal of 14th February 1609 there is an entry: "Hassard—69—incurable—a new writ."

[4] *Alcock's case*, 1811, 66 Com. Jour. 226. And cp. case of Mr. Andrew Stewart, 1861, Hans. 3rd ser., pp. 1940-68; and Co. 4th Inst. p. 8.

Sec. 2.

The passing of this Act.—10th May 1886.

Asylum.—Definition of, sec. 341 of Lunacy Act 1890, *ante.*

House.—This term would include either licensed house (as to which see sec. 197 of the Act of 1890), or house in which a lunatic member is received as a single patient (sec. 5, *ib.*, *ante*). "House."

As to reception of lunatics in Scotland and Ireland, see *ante* pp. 75 and 78.

Lunatic.—See definition of, sec. 341 of the Lunacy Act 1890.

The duty.—As to penalty for default, see sec. 3, *post*; and see clause (ii.), *inf.*

The court, judge, magistrate.—As to judicial authority, see sec. 9 of the Lunacy Act 1890, *ante.* The judicial authority is not within sec. 3, *post.* As to Scotland and Ireland, see *ante* pp. 75 and 78.

Or person.—The person making an urgency order (sec. 11 of the Act of 1890, *ante*). As to Scotland and Ireland, see *ante* pp. 75 and 78. Sec. 3, *post*, does not apply to a person on whose order a member has been confined.

Medical person or practitioner.—See definition of, sec. 341 of the Lunacy Act 1890, *ante.*

Certificate.—As to medical certificates, see *ante* pp. 87 and 161. As to certificates in Scotland and Ireland, see *ante* pp. 77 and 80.

Certify.—No form is prescribed. Form 8 in Sched. ii. to the Lunacy Act 1890, *ante*, may be adapted.

(ii.) It shall be lawful for any two members of the House of Commons to certify to the Speaker that they are credibly informed of such reception, committal, or detention.

It shall be lawful.—These words are here permissive only. The Speaker may act on the certificate or certificates under clause (i.) alone. Query whether the Speaker could not act on the initiative of two members under this clause even if the judicial authority, etc., failed to report under clause (i.). "It shall be lawful." Query whether Speaker could act though judicial authority did not report.

(iii.) The Speaker shall forthwith transmit such certificate or certificates, as the case may be, if the place of such reception, committal, or detention is in England, to the Commissioners in Lunacy in England; if such place is in Scotland, to the Board of Commissioners in Lunacy in Scotland; and if such place is in Ireland, to the Inspectors of Lunatic Asylums in Ireland.

Commissioners in Lunacy.—As to appointment, etc., of, see sec. 150 *et seq.* of the Lunacy Act 1890, *ante.* As to duty of under this section, see clause (iv.), *inf.* Clause (v.), *inf.*, does not apply to the Commissioners under this section.

Board of Commissioners.—See *ante* p. 75, and see preceding note.

Inspectors of lunatic asylums.—See *ante* p. 78, and note to "Commissioners in Lunacy," *sup.*

(iv.) On receiving such certificate or certificates, as the case may be, the Commissioners of Lunacy in England, the Board of Commissioners in Lunacy in Scotland, or the Inspectors of Lunatic Asylums in Ireland, or any two of them, as the case may be, shall, without delay, visit and examine the member to whom the certificate relates, and shall report to the Speaker whether he is of unsound mind.

Sec. 2.

See notes to clause (iii.), *sup.*

Shall visit and examine.—As to obstruction of Commissioners in exercise of their powers, see sec. 321 of the Lunacy Act 1890, *ante.*

"Report."

Report.—*Semble*, the report would be under the seal of the Commission.

This report is not laid before the House unless after the expiry of six months the examining authority report that the lunatic member is still of unsound mind (see clause (v.), *inf.*).

"Unsound mind."

Unsound mind.—As to meaning of this term, see *ante* p. 4. It is conceived that the Commissioners would consider the question of unsoundness of mind in the light of a member of Parliament's duties.

(v.) If the report is to the effect that the member is of unsound mind, the Speaker shall, at the expiration of six months from the date of the said report, if the House of Commons be then sitting, and if not, then as soon as may be after the next sitting thereof, require the Commissioners in Lunacy in England, or the Board of Commissioners in Lunacy in Scotland, or the Inspectors of Lunatic Asylums in Ireland, or any two of them, as the case may be, again to visit and examine the member aforesaid; and if they shall report that he is still of unsound mind, the Speaker shall forthwith lay both reports on the table of the House of Commons, and thereupon the seat of the member shall be vacant.

Not necessary lunacy should be reported to be incurable. Query whether option if member still of unsound mind. Seat cannot be vacated during recess.

See notes to clause (iv.), *sup.*

Still of unsound mind.—See note to clause (iv.), *ante.*

It is not necessary that the lunacy should be reported to be incurable (see *ante* p. 786, as to old practice in this respect); and query whether probability of permanence or the reverse can be considered by the examining authority or reported upon. The clause does not seem to give either the Speaker or the House any option if the lunatic member is "still of unsound mind."

And thereupon the seat.—Apparently therefore the seat cannot be vacated nor can the writ issue during a recess.

(vi.) Where the seat of a member so becomes vacant, the Speaker shall issue his warrant to the Clerk of the Crown to make out a new writ for electing another member in the room of the member whose seat has so become vacant.

See notes to clause (v.), *sup.*

Penalty.

3. Every medical person or practitioner, and every superintendent, officer, proprietor, or other person having the chief charge of any asylum, house, or other place, who shall wilfully contravene or disobey the provisions of this Act shall be liable to a penalty not exceeding one hundred pounds, to be recovered with costs at the suit of any person in Her Majesty's High Court of Justice in England or Ireland, or in the Court of Session in Scotland, as the case may be.

Medical person or practitioner.—See note to sec. 1.

Scope of section.

And every . . . place.—It will be observed that the section does not apply to the judicial authority, or the person signing an urgency order, under sec.

2, clause (i.), *sup.*, or to the examining authority under sec. 2, clauses (iv.) and (v.), *sup.*

Idiots or lunatics are subject to various other disqualifications, which may conveniently be noticed here.

Other disqualifications.

Sovereign.

Sovereign.—If a sovereign of this country become lunatic, the constitutional method of dealing with the situation is the appointment of a Regent by the two Houses of Parliament. There are two precedents for this course. In 1454 a Regent was appointed on account of the derangement and mental imbecility of Henry VI.[1] Again, on the illness of George III. being reported to Parliament in 1788, a Select Committee consisting of twenty-one members was appointed by each House to examine his physicians touching his health, and report the result of such examinations to the House.[2] After the examination of the King's physicians, Committees were in like manner appointed to examine and report precedents of such proceedings where the exercise of the royal authority had been prevented or interrupted by infancy, sickness, infirmity, or otherwise.[3] The King's temporary recovery interrupted the labours of these Committees. But on the return of his disease in 1810,[4] Committees of the two Houses reported "that for the purpose of providing for the exercise of the royal authority during the continuance of His Majesty's illness, in such manner and to such extent as the circumstances and the urgent concerns of the nation required, it was expedient that His Royal Highness the Prince of Wales, being resident within the realm, should be empowered to exercise and administer the royal authority, according to the laws and constitution of the United Kingdom, in the name and on the behalf of His Majesty, and under the style and title of Regent of the Kingdom, and to use, execute, and perform in the name and on the behalf of His Majesty all authorities, prerogative acts of government, and administration of the same, which belong to the King of this realm to use, execute, and perform according to the laws thereof."

Appointment of Regent.

Precedents—(1) Henry VI. (2) George III.

Procedure in case of George III.

The Prince of Wales—afterwards George IV.—was accordingly appointed Regent.[5]

Ecclesiastical offices and privileges.

Certain ecclesiastical offices and privileges.—(1) Any archbishopric or bishopric may be declared vacant by Order in Council on a representation to Her Majesty that any archbishop or bishop is desirous of resigning on the ground of mental infirmity and incapacity for the due performance of his duties (Bishops' Resignation Act 1869, 32 & 33 Vict. c. 111, sec. 2). The representation is to be made in the case of a bishop desirous of resigning by the archbishop of the province, and in the case of an archbishop by such archbishop himself (*ib.*). (2) If it appears to any archbishop on credible evidence that any bishop within his province is incapacitated by reason of permanent mental infirmity from the due performance of his duties, he is to call to his aid two bishops of his province, and such archbishop and bishops are to inquire into the existence of the incapacity, and if satisfied that it exists, are to certify the fact under their hands and seals to a principal Secretary of State, together

Resignation of archbishop or bishop.

Proceedings to prove incapacity of bishop.

[1] Hallam, *Middle Ages*, vol. iii. pp. 184-190.

[2] Lords' and Commons' Journals, 8th December 1788.

[3] Lords' Journal, 12th December 1788; Commons' Journal, 10th December 1788. These precedents are reported in the Lords' Journal, 17th October 1788, and the Commons' Journal, 12th December 1788.

[4] Lords' Journal, 4th January 1811; Commons' Journal, 2nd January 1811.

[5] Cp. 51 Geo. III. c. 1; 52 Geo. III. cc. 6, 7, 8; Parliamentary Debates, 1788 and 1789, March 1810, vol. xviii.; Cobbett, Parliamentary Debates; and 1 Will. IV. c. 2.

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with the evidence on which the certificate is founded (*ib.* sec. 3). On the receipt of the certificate, the dean and chapter of the diocese will be empowered in the usual way to appoint a bishop coadjutor (*ib.* sec. 4.) As to the relative positions of bishop and bishop coadjutor, see sec. 5 of the same statute. The salary of a bishop coadjutor is £2000 a year. (3) If any bishop has been found by the process of law to be lunatic or of unsound mind, the archbishop may certify the incapacity of the bishop without an inquiry (*ib.* sec. 7). (4) In the case of an archbishop becoming incapable, a bishop coadjutor may be appointed in the same way, except that (1) there is substituted for the archbishop in the inquiry "such bishop of his province as Her Majesty may by sign manual determine"; (2) in the case of the Archbishop of York, the bishop coadjutor is entitled to a salary of £3000, and in the case of the Archbishop of Canterbury he is entitled to one of £4000 a year; and (3) the archiepiscopal jurisdiction capable of being exercised by the archbishop shall be exercised by the senior bishop of the province (*ib.* sec. 12).

[Or archbishop.

Incumbents. Resignation of.

Provision is made by the Incumbents' Resignation Act 1871 (34 & 35 Vict. c. 44) for the resignation, on the ground of permanent mental infirmity, of a benefice by an incumbent who has been incumbent in such benefice for seven years continuously, after an inquiry by a commission issued by the bishop.

Appointment of curate. Sequestration of living. Where incumbent found lunatic.

If an incumbent of a living become of unsound mind, and incapable of performing his parochial duties, his living is not vacated, but the bishop of the diocese will provide for the services of the church by appointing a curate, who will be paid out of the profits of the living.[1] The living of a lunatic incumbent is liable to sequestration by his creditors.[2] Where an incumbent has been found lunatic by inquisition, the right of resignation under the Act of 1871 may be exercised,[3] and the stipend of any curate appointed to act for him is to be paid[4] by the committee of the estate.

As to rights of presentation, see p. 791, note 5.

Judicial and public offices, etc. Judge. Ministerial acts good. Removal of Supreme Court. Masters. County Court. Coroners. Recorders.

Judicial and other public offices and privileges.—An idiot or lunatic is disqualified for being a judge. Ministerial acts done by a lunatic judge would, however, it is said,[5] be held good. A lunatic Judge of the Supreme Court could only be removed by the Crown on address presented by both Houses of Parliament.[6] County Court and deputy County Court judges may be removed by the Lord Chancellor for inability,[7] and so may coroners.[8] Masters are removable by a majority of the appointing judges, with the approval of the Lord Chancellor.[9] Recorders hold office during good behaviour only under sec. 163 of the Municipal Corporations Act 1882. But there is no express statutory provision for their removal on the ground of incapacity,[10] and the same observation applies to the Masters in Lunacy. Justices of the

[1] Burn, E.L., tit. "Coadjutor." As to old practice and authorities, see Shelf. Lun. p. 617.

[2] *Ex parte Hastings*, 1807, 14 Ves. 182.

[3] Act of 1871, *sup.*, sec. 18.

[4] 1 & 2 Vict. c. 106, sec. 79.

[5] Bryd. 65-85; Brooke's Abr. 258 (*a*); Mirr. Just. c. 2, sec. 2.

[6] Cp. Judicature Act 1875, sec. 5. See cases of alleged incapacity on the part of Judges, Lord Norbury, 1826, and Chief-Justice Lefroy, 1866.

[7] County Courts Act 1888, secs. 15 and 18.

[8] Coroners Act 1887, sec. 8.

[9] Judicature Act 1879, sec. 9, subs. (4).

[10] Under the Recorders, Magistrates, and Clerk of the Peace Act 1888 (51 & 52 Vict. c. 23), the authority having power to appoint any of these judges or a clerk of the peace, may appoint or remove a deputy, if the judge or clerk is incapable of doing so by reason of illness.

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peace and (*semble*) stipendiary magistrates may be discharged from their offices on the ground of incapacity by writ under the Great Seal.

Justices and stipendiary magistrates.

An idiot or lunatic is incapable of acting as an arbitrator.[1]

Arbitrators.

Idiots and lunatics, except during lucid intervals, are disqualified from voting at Parliamentary or municipal elections, and their votes are liable to be struck off on a scrutiny.[2] An idiot or lunatic cannot be a guardian,[3] or liquidator of a company,[4] or visitor of charities,[5] nor can his domicile be changed either by the lunatic himself[6] or by the person having charge or custody of him. Where, however, a man at the time he attains his majority is of unsound mind, and remains in that state continuously up to the time of his death, the incapacity of minority never having been followed by adult capability, will continue to confer upon the father the right of choice in the matter of domicile for his son, and a change of domicile by the father will usually produce a similar change of domicile as regards the son.[7]

Parliamentary and municipal elections.

Guardian.

Liquidator.

Domicile.

As to agency.—See *ante* p. 16.

As to apprenticeship.—See *ante* p. 408 (partnership).

As to evidence of lunatics.—See *ante* pp. 682 *et seq.*

[1] Bryd. 58.

[2] Cp. *Bedfordshire*, 1785, 2 Lud. 567; *Bishop's Castle*, 1699, 13 Jour. 171; *Oxfordshire*, 1755, 27 Jour. 176. A lunatic is not liable to serve as the officer of a municipal corporation (5 & 6 Will. IV. c. 76, sec. 71).

[3] Co. Litt. 886; *ex parte Brydges*, 1791, 2 Fonbl. Eq. 249 (*n*). As to obtaining consent to marriage where a guardian (or parent) is *non compos*, see 4 Geo. IV. c. 76, sec. 17; *re I. C.*, 1838, 3 My. & C. 471; *ex parte Reibey*, 7 Jur. 589.

[4] Cp. *re North Molton Mining Co.*, 1886, 34 W.R. 527, where insane liquidator was removed under sec. 141 of the Companies Act 1882. A lunatic or idiot shareholder may vote by his committee (Companies Clauses Consolidation Act 1845 (8 & 9 Vict. c. 16), sec. 79). And cp. Table A, sec. 45 of the Companies Act 1862.

[5] See *A.-G.* v. *Dixie*, 1807, 13 Ves. 533; and *Floyd's* or *Flood's* or *Jesus College case*, 1615, cit. Tyssen Char. 33 and Hob. 136. Neither the lunatic nor his committee can present to an advowson (Com. Dig. Idiot, C). The right of presentation is in the Lord Chancellor.

[6] Cp. *Bempde* v. *Johnson*, 1796, 3 Ves. 201; *Hepburn* v. *Skirving*, 1861, 9 W.R. 764; and as to irremovability, see *Reg.* v. *Whitby*, 1870, L.R. 5 Q.B. 325, and *ante* pp. 648 *et seq.*

[7] *Sharpe* v. *Crispin*, 1869, L.R. 1 P. & D. 611.

II.

LUNACY IN RELATION TO CRIMINAL LAW

I.

THE CRIMINAL LUNATICS ACTS 1800-84

A

THE CRIMINAL LUNATICS ACT 1800

(39 & 40 Geo. III. c. 94)

An Act for the safe custody of persons charged with offences. [28th July 1800.]

Preamble.] *Whereas persons charged with high treason, murder, or felony, may have been or may be of unsound mind at the time of committing the offence wherewith they may have been or shall be charged, and by reason of such insanity may have been or may be found not guilty of such offence, and it may be dangerous to permit persons so acquitted to go at large: Be it therefore enacted, by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in all cases where it shall be given in evidence upon the trial of any person charged with treason, murder, or felony, that such person was*

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insane at the time of the commission of such offence, and such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity; and if they shall find that such person was insane at the time of the committing such offence, the Court before whom such trial shall be had, shall order such person to be kept in strict custody, in such place and in such manner as to the Court shall seem fit, until His Majesty's pleasure shall be known; and it shall thereupon be lawful for His Majesty to give such order for the safe custody of such person, during his pleasure, in such place and in such manner as to His Majesty shall seem fit; and in all cases where any person, before the passing of this Act, has been acquitted of any such offences on the ground of insanity at the time of the commission thereof, and has been detained in custody as a dangerous person by order of the Court before whom such person has been tried, and still remains in custody, it shall be lawful for His Majesty to give the like order for the safe custody of such person, during his pleasure, as His Majesty is hereby enabled to give in the cases of persons who shall hereafter be acquitted on the ground of insanity.

The jury, in case of any person charged with treason, etc., proving to be insane, to declare whether he was acquitted by them on account of insanity, and the Court shall order him to be kept in custody till His Majesty's pleasure be known, etc.

An Act for the safe custody, etc.—It may be convenient here to sketch the history of the law as to criminal lunatics, reserving for separate and subsequent treatment the law as to the criminal responsibility of the insane.

History of legislation as to criminal lunatics.

History of Legislation as to Criminal Lunatics.

The term "criminal lunatics" is an ambiguous one,[1] and is used to include classes of persons very different from one another.[2] In

The term "criminal lunatics."

[1] In his evidence before the Select Committee of 1859 (see *ante*, p. 73), Lord Shaftesbury mentions that when he used it in bringing a motion before the House of Commons he was severely taken to task for doing so (Report of 1859, Ans. 439).

[2] See Report of the Criminal Lunacy Departmental Commission, 1882 (c. 3418, p. 3). Free use has been made of this and similar reports in this sketch of the law as to criminal lunatics.

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Criminal Lunatics Act 1867.

the Criminal Lunatics Act 1867 (30 Vict. c. 12), sec. 2, it was defined as meaning "(*a*) any person for whose safe custody during her pleasure Her Majesty is authorised to give order; (*b*) any person whom one of Her Majesty's principal Secretaries of State is authorised by law to direct to be removed to a lunatic asylum under any Act of Parliament; (*c*) any person sentenced or ordered to be kept in penal servitude who may be shown to the satisfaction of the Secretary of State to be unfit from imbecility of mind for penal discipline." The Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64), sec. 16, which repealed the Act of 1867, provides that it shall mean "(*a*) any person for whose safe custody during Her Majesty's pleasure Her Majesty or the Admiralty is authorised to give order; and (*b*) any prisoner whom a Secretary of State or the Admiralty has, in pursuance of any Act of Parliament, directed to be removed to an asylum or other place for the reception of lunatics."

Criminal Lunatics Act 1884, s. 16.

Further analysis.

Guilty but insane.

Insane on arraignment.

Insane on remand.

Queen's pleasure lunatics.

Convicts becoming insane.

In point of fact, however, "criminal lunatics" includes three classes of persons. (1) Those who, when put upon their trial on some criminal charge, are found guilty but insane at the time of committing the offence; (2) those who are found insane upon arraignment. The detention of these persons differs in character from that of ordinary lunatics, inasmuch as they are liable to be tried on recovering their sanity, and it is on this ground that they have—somewhat improperly—been termed "criminal lunatics." Persons apparently insane under remand or awaiting trial fall under the same category. The statutory powers which provide for the detention of these two classes and a few other special kinds as *Queen's pleasure lunatics* are to be found in 39 & 40 Geo. III. c. 94, secs. 2 and 4, *post;* 14 & 15 Vict. c. 81, secs. 1 and 2, *post;* and the Trial of Lunatics Act 1883 (46 & 47 Vict. c. 38), sec. 2, *post.* (3) Convicts and other prisoners undergoing sentences who have become insane during their term of punishment. These persons are strictly criminals, but it is only while they are criminals, *i.e.* during the currency of their sentences, that they are criminal lunatics. The statutory powers for their detention as *Secretary of State's lunatics* are to be found in sec. 2 of the Criminal Lunatics Act 1884, *post.*[1]

Secretary of State's lunatics.

For practical purposes, therefore, criminal lunatics may be divided into "Queen's pleasure lunatics" and "Secretary of State's lunatics."

Improper use of term "criminal lunatics."

The term "criminal lunatic" is also sometimes erroneously applied to persons who (*a*) were at one time criminal lunatics, but who, having been absolutely discharged from the custody of the State either by the completion of their term of imprisonment or under the provisions of sec. 5 of the Criminal Lunatics Act 1884, *post*, have ceased to be criminals, and therefore cannot any longer be criminal lunatics; or (*b*) have at some period of life been either convicted of crime or in prison under a criminal charge, and who have left prison in a state of sanity, and have afterwards become insane. Such persons neither are, nor ever have been, criminal lunatics.

[1] Earlier statutes were, 3 & 4 Vict. c. 54, sec. 1, and 27 & 28 Vict. c. 29, sec. 2.

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Distinction between criminal and other lunatics.

The capital distinction between criminal and other lunatics consists in the fact that all criminal lunatics are in custody by virtue of an order of a court of law, and none of them can be discharged without a warrant signed by the Secretary of State.

Historical summary of law.

39 & 40 Geo. III. c. 94.

Hadfield's case.

The oldest statute relating to criminal lunatics is the Act of 39 & 40 Geo. III. c. 94, now under consideration. It was passed on the 28th of July 1800, and the cause of its enactment was the difficulty which arose as to how Hadfield (*v. post* p. 886), who had been tried on the 26th of June 1800 for his attempt to shoot the King in Drury Lane Theatre, and found to be insane, was to be disposed of. Prior to this the practice had been varying and uncertain, though there was no doubt at common law as to the power of the Court to order the detention of such persons in safe custody. The Act of 1800 provided that in cases of high treason, murder, or felony, persons acquitted on the ground of insanity (sec. 1, *ante*), or found insane upon arraignment (sec. 2, *post*), may be ordered by the Court to be kept in strict custody till Her Majesty's pleasure was known, and such persons were therefore called Queen's pleasure lunatics. By sec. 4, *post*, insane persons by whom the Sovereign's person is endangered may be kept in safe custody by order of the Privy Council or Secretary of State pending further inquiry. The detention of such persons rests in the Lord Chancellor, Lord Keeper, or Lords Commissioners for the Custody of the Great Seal.

Earlier practice.

Act of 1800.

Queen's pleasure lunatics.

Act of 1800 intended to be temporary.

It is clear by the wording of this Act that "it was not intended that the direction of the Legislature should rest here. The remanding to strict custody was a temporary expedient of an incomplete law, necessarily passed in the hurry of the momentous occasion which produced it, to be completed on a more deliberate consideration."[1]

No provision for treatment under.

Results of the omission.

In point of fact, however, no provision was made for the proper care or treatment of Queen's pleasure lunatics under the Act of 1800, and they appear to have been simply distributed among the county gaols. The results of this system were inconvenient. The confinement was so protracted that counsel are said to have frequently withdrawn a plea of insanity because punishment was less severe than a committal to an asylum. On the other hand, ruffians temporarily suffering from mental aberration were committed to an asylum, and kept there after recovery. See a case under the old law, *ex parte Hill, re Brooke*, in Coop. C.C. 54 (1813).

Again, in the county gaols the arrangements for watching criminal lunatics were defective.[2] Moreover, under the existing law, the parochial authorities had no motive to restrain the lunatics within their districts from acts of violence, but rather the reverse. Under

[1] Report of Select Committee on the State of Lunatics, 1807, p. 24.

[2] In confirmation of this opinion the Committee refer (*ubi sup.*, at p. 4) to the case of a man, Aaron Bywater, who was acquitted at the Montgomery Assizes of a murder committed by him on the ground of insanity, and ordered to be detained in the county gaol. In less than three weeks afterwards he, though ordered to be strictly watched, was allowed during an apparently lucid interval to escape out of the gaoler's sight, and murdered one of his fellow-prisoners.

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17 Geo. II. c. 5, sec. 20, the cost of keeping, maintaining, clothing, and curing lunatics "so far disordered in their senses that they may be dangerous to be permitted to go abroad" might be ordered by justices of the peace before whom they were brought to be a charge on their estates or the parochial funds of their places of settlement. If, however, such lunatics committed actual offences, and so were brought under the operation of the Act of 1800, the expense of their maintenance was cast upon the county in which they were apprehended. The parish officers had therefore no motive (but rather the reverse) to take proper precautions against the commission of acts of violence by lunatics within their districts. Accordingly a Select Committee of the House of Commons, appointed to inquire into the state of lunatics, reported in 1807[1] that it was highly desirable that a building should be erected for the separate confinement of all persons detained under the Act of 1800 for offences committed during a state of insanity, and that the magistrates of the county where the trial was held should in all cases, where it did not appear to them that the lunatic had sufficient property to defray the expenses of his own maintenance, inquire into the place of his last legal settlement, and make an order on such parish, or if that could not be ascertained, upon the county where he had been tried, to allow such weekly sum for his maintenance as should from time to time be fixed by the Home Secretary, or such persons as the Sovereign should appoint to superintend such place of confinement. The Committee further said: "As one establishment of this nature will be sufficient for the whole kingdom, it may be expedient that it should be in or near the metropolis, and that power should be given to the Secretary of State to make such regulations as may not only provide for the due care and management of the persons there confined, but may also ensure a full examination by competent judges into the state of mind of every person who may appear to be cured previous to his being allowed his discharge." This recommendation was only, however, very tentatively adopted.

Select Committee of 1807.

Recommendation of.

In 1814 wards, constructed for criminal lunatics, were attached to Bethlem Hospital at a cost of £25,144 : 15s., upon the understanding[2] that the Government would be at the annual charge of maintaining such criminal lunatics, but that their control and management should be exercised under the superintendence of the governors of the hospital, and that they should be duly attended to by the medical and other officers belonging to the establishment.[3]

Criminal lunatic wards in Bethlem Hospital.

The Government, a few years later,[4] found it necessary to double the accommodation at Bethlem Hospital, and afterwards still further provision was required. Hence an arrangement was entered into in 1849 between the Secretary of State and the proprietor of Fisherton House, near Salisbury, for the erection of detached wards in con-

Fisherton House.

[1] Report of 1807, p. 4.

[2] Parliamentary Paper, No. 443 of 1816.

[3] A yearly allowance of £200 was to be distributed among these officers for additional trouble.

[4] Report of Departmental Commission of 1882, p. 5.

nection with that asylum for the reception of those criminal lunatics who were in excess of the number for whom provision existed at Bethlem.[1]

House of Lords' Committee 1835.

In the meantime a Select Committee appointed by the House of Lords in 1835 strongly recommended that "persons whose trials have been postponed, or who, having been tried, have been acquitted on the ground of insanity, shall not be confined in the prisons or houses of correction.[2]

Act of 1840.

In 1840 the statute 3 & 4 Vict. c. 54,[3] was passed, and by this Act, the main purpose of which was to provide for the removal of insane prisoners to asylums during their insanity and for their maintenance in such asylums, the regulations made by the Act of 1800 (39 & 40 Geo. III. c. 94) with respect to persons charged with treason, murder, and felony were extended to persons charged with misdemeanour.

Instructions for State asylum.

The criminal lunatic wards at Bethlem and Fisherton House being practically full, and further accommodation being still required, it was at length determined to adopt the recommendation of the Committee of 1807[4] in favour of the erection of a State asylum. Instructions with this end in view were in 1856 given by the Secretary of State for the Home Department, Sir George Grey,[5] the site of the present Broadmoor Asylum was purchased in 1857, selected and approved of, and the building was commenced.

Committee of 1859.

In 1859, whilst the asylum was still in process of erection, another Select Committee was appointed by the House of Commons to inquire into the operation of Acts of Parliament relating to lunatics. The Report of this Committee, published in 1860,[6] contained the following observations[7] with reference to the existing practice of sending criminal lunatics to Bethlem or Fisherton: "To mix such persons with other patients is a serious evil; it is detrimental to the other patients as well as to themselves; but to liberate them on recovery is a still greater evil, and could not be sanctioned, for the danger to society would be extreme and imminent."

Broadmoor Act 1860.

In pursuance of this Report, a further Act of Parliament,[8] to make better provision for the custody and care of criminal lunatics, and for the regulation of criminal lunatic asylums, was passed in 1860. It enabled Her Majesty by warrant to appoint any asylum or place in England that may be deemed suitable to be an asylum for criminal lunatics (sec. 1), and empowered the Secretary of State to appoint a council of supervision, as well as officers, attendants, and

[1] The removals from Bethlem to Fisherton House were effected by Secretary of State's warrant, and were confined to lunatics reported to be harmless, and not to have committed the graver crimes (Committee of 1859, Ans. 2452).

[2] Parliamentary Paper, No. 42, 1835.

[3] See *post* p. 798 as to the practice under this Act in regard to insane prisoners removed by order of the Secretary of State to the county lunatic asylum. See *Reg.* v. *Dwerryhouse*, 1847, 2 Cox C.C. 291, 446; *Reg.* v. *Blackwell*, 1857, 7 Cox C.C. 353; *Reg.* v. *Justices of Sussex*, 1875, 13 Cox 33.

[4] *Ante* p. 796.

[5] Committee of 1859, Ans. 3258.

[6] Parliamentary Paper, No. 495, 1860.

[7] At p. xiv.

[8] 23 & 24 Vict. c. 75, *post*.

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servants for any asylum provided under the Act, and to make rules for the government of such asylums (secs. 4 and 5). As yet Broadmoor only has been appointed under this authority, and hence the statute of 1860 is known as the Broadmoor Act. This asylum was opened in 1863.

Opening of Broadmoor.

Act of 1864.

In 1864 the statute 27 & 28 Vict. c. 29 was passed, which amended 3 & 4 Vict. c. 54, so far as it related to prisoners found insane when in prison, and liable to be detained by a warrant of the Secretary of State.

Act of 1867.

In 1867 the statute 30 Vict. c. 12, above referred to (*ante* p. 794), as giving the first definition of criminal lunatic, and providing also for the transfer of persons from a criminal to a county lunatic asylum,

Act of 1869.

was enacted, and the sixth section of it was in 1869 made retrospective by 32 & 33 Vict. c. 78, the last statute touching the subject of criminal lunatics.

Woking Convict Prison.

In February 1875, on the recommendation of the then Home Secretary, the Treasury sanctioned the establishment of a lunatic wing at Woking Convict Prison, at a cost not to exceed £7000, in order that insane convicts might thereafter be sent to it instead of to Broadmoor. This plan was carried into execution, but the lunatic wing has never been appointed under sec. 1 of the Broadmoor Act "an asylum for criminal lunatics."[1]

Departmental Commission appointed in 1880.

In 1880 a Departmental Commission was appointed by the then Home Secretary, Sir William Harcourt, to inquire into and report upon the following questions: (1) Whether it is desirable that criminal lunatics should be separated from pauper lunatics to a greater degree than at present? (2) Whether special provisions should be made for the care and custody of imbeciles and lunatics who are habitually criminal? (3) Whether any change should be made in the incidence of charge for the maintenance of any class of criminal lunatics? (4) Whether, having regard to the above questions, any modification should be made in the purposes to which Broadmoor Criminal Lunatic Asylum is at present appropriated?

Report of 1882.

This Commission presented its Report in 1882. This Report throws a complete light on the state of the law as to criminal lunatics prior to recent legislation, and some of the matters with which the Commission dealt deserve notice here.

Custody, removal, and discharge of criminal lunatics.

Custody, removal, and discharge of criminal lunatics.[2]—Under 39 & 40 Geo. III. c. 94, secs. 1 and 2, 3 & 4 Vict. c. 54, sec. 3 (*ante* pp. 795 and 797), the place and manner of detention of Queen's pleasure lunatics were absolutely in the discretion of Her Majesty. Under 23 & 24 Vict. c. 75 (*ante* p. 797), Broadmoor was appointed an asylum for criminal lunatics, and it remains the only criminal lunatic asylum. Under

Acts of 1800 and 1840.

Act of 1864.

27 & 28 Vict. c. 29, sec. 2, the Secretary of State was empowered to

[1] This arrangement was made in consequence of complaints that the accommodation at Broadmoor did not permit of the classification and separation of the two great classes of patients: those who committed crime as the result of lunacy, and those who became lunatic after trial (Departmental Commission of 1882, Ans. 983).

[2] Cp. Report of 1880, pars. 7-15, pp. 6-10.

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order criminal lunatics to be removed to any lunatic asylum or other proper receptacle for insane persons, but it did not (and does not) thereby become a criminal lunatic asylum. The practice of the Home Office was (1) to send to Broadmoor all Queen's pleasure lunatics charged with serious crime, and all female convicts becoming insane while under sentence of penal servitude; (2) to remove to and retain at Woking Convict Prison all insane male[1] convicts under sentence of penal servitude until within a few weeks of the expiry of their sentence, when they were removed to Broadmoor; (3) to remove to the nearest county or borough asylum all other insane prisoners; (4) to remove to and retain at Parkhurst or Dartmoor Prisons weak-minded convicts who had not been shown to the satisfaction of the Secretary of State to be unfit for penal discipline, and require special treatment.

Practice of Home Office.

Under the Criminal Lunatics Act 1867 (30 Vict. c. 12), the Secretary of State was empowered to discharge, absolutely or conditionally, any criminal lunatic (sec. 5), and to remove from a criminal lunatic to a county asylum any criminal lunatic whose sentence had expired (sec. 6). Under the Prisons Act 1877, the Secretary of State generally adopted, as regards lunatic prisoners other than convicts, the course formerly taken by the visiting justices, viz. if a lunatic prisoner was in what formerly was a borough prison, he was removed to a borough asylum, and if he was in what formerly was a county prison, he was removed to a county asylum.[2] With regard to Queen's pleasure lunatics, the practice was to consider from time to time, upon a report from the medical superintendent of Broadmoor, their various conditions and circumstances, and to discharge them absolutely or conditionally as soon as it was thought safe to do so. There was, however, no systematic revision of the cases at Broadmoor, nor does there appear to have been any revision whatever of the cases of Queen's pleasure lunatics detained in county or borough asylums. Conditional discharges were frequently granted, but only in cases where in the first instance an application had been set in motion by the authorities of the asylum or by the friends of the criminal lunatic, or by the criminal lunatic himself. The only

Criminal Lunatics Act 1867.

Prisons Act 1877.

No systematic revision of cases.

Conditional discharges granted.

[1] This arrangement was settled in consequence of two evils — the insufficiency of the accommodation at Broadmoor so far as regarded the male division for the criminal lunatics of the country, and the insufficiency of means (owing to the plan upon which the asylum was built) of ensuring the safe custody of male convicts during the currency of their sentence. There being, however, abundant accommodation in the female division of Broadmoor, in consequence of the erection of a new wing in 1866, the whole of the female criminal lunatics becoming insane whilst undergoing penal servitude, and the majority of those detained during Her Majesty's pleasure, were still received at Broadmoor (Report of 1880, par. 7, pp. 6 and 7). The object of the transfer of insane male convicts from Woking to Broadmoor shortly before the expiration of their sentences was to enable them to be passed from Broadmoor to the asylum of the locality in which the offence was committed, under the Criminal Lunatics Act 1867 (30 Vict. c. 12), sec. 6, on the expiration of their terms of penal servitude.

[2] There were difficulties as to Scotch lunatic convicts and military and naval prisoners. See notes to Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64), s. 8, subs. (1) "provided that," and subs. (3), *post*.

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condition usually inserted in the warrant of discharge was that the patient should return immediately into the same or other custody whenever required to do so by the Secretary of State.

Incidence of charge for maintenance.

Government paid till order for maintenance obtained.

Procedure to obtain orders for maintenance.

Incidence of charge for maintenance.[1]—The Government paid for the maintenance of all criminal lunatics unless and until an order for maintenance was obtained from other sources, and the duty of obtaining such orders rested practically with the Treasury, as under the Prisons Act 1877 (39 & 40 Vict. c. 61), the local authorities had ceased to be responsible for the cost and discipline of the prisons.[2] Before an order for maintenance could be obtained, the Treasury Solicitor had to bring at least one witness from the country to prove either the place of birth or the continuous residence which gave a settlement under the Act of 1877.[3]

In respect to patients sent to Broadmoor, the ordinary gross sum charged on the union or county was 14s. a week, or £36 : 8s. a year, but this was subject to a rebate of 4s. a week paid out of imperial funds, so that the actual amount of contribution was £26 a year.[4]

The law provided for the maintenance of the various classes of criminal lunatics as follows :—

Persons acquitted or found insane upon arraignment.

In regard to persons acquitted on the ground of insanity, or found insane upon arraignment, or upon trial appearing to be insane, no order could be made on the lunatic's property. But if the settlement could be ascertained, an order for maintenance could be made on the overseers of the parishes in which the settlement was adjudged (or the guardians of the union in case the parish was comprised in a union), such order not to include cost of ascertaining settlement or expenses of conveyance to asylum.[5] If the settlement was unascertainable, no order for maintenance could be made. The authority for payment of these expenses was determined by 39 & 40 Geo. III. c. 94, secs. 1 and 2 (pp. 792 and 806), 9 Geo. IV. c. 40, sec. 54, repealed by 8 & 9 Vict. c. 126.

Persons charged with misdemeanour.

The same law prevailed with reference to persons charged with misdemeanour, except that the order for maintenance might include costs of conveyance. Also if the settlement was unascertainable, it

[1] Cp. Report of 1880, pars. 26-38, pp. 13-16.

[2] Resting upon them under 9 Geo. IV. c. 40, sec. 54. Sec. 4 of the Prisons Act 1877 transferred the liability for the maintenance of a criminal lunatic from the county to the Consolidated Fund. Cp. *Mews* v. *Reg.*, 1883, 15 Cox C.C. 185.

[3] Sec. 20.

[4] Only 234 out of 483 patients in Broadmoor at the time when the Departmental Commission of 1880 reported were, however, paid for out of local rates, the remainder, with the exception of a small number maintained out of private sources, being at present paid for out of Treasury funds. This anomaly partly arose from the fact that previous to the transfer of criminal lunatics to Broadmoor, the Government undertook the maintenance of all criminal lunatics detained in Bethlem, and there still remained one lunatic in the latter asylum, for whom a charge of £56 appeared annually in the estimates.

[5] In *Pegge* v. *Guardians of Lampeter Union*, 1873, 38 J.P. 453, a case decided under 3 & 4 Vict. c. 54, secs. 1 and 2, it was held to be competent for guardians to agree to pay for the maintenance of a lunatic without an order under sec. 2 of that statute, and that as the plaintiff, who had maintained the lunatic, could not get rid of him without an order of the Secretary of State, the defendants could not determine the contract by a notice refusing to pay.

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was provided that maintenance and expenses of conveyance might be charged on the county. The authority for these payments was regulated by 39 & 40 Geo. III. c. 94, sec. 1 (p. 792), 3 & 4 Vict. c. 54, secs. 2 and 3, and 27 & 28 Vict. c. 29, secs. 5 and 6.

9 Geo. IV. c. 40, sec. 54.

The maintenance of the two foregoing classes of Queen's pleasure lunatics was provided for by 9 Geo. IV. c. 40. The 54th section empowered the justices to make an order for the prisoner's maintenance either upon his parish of settlement, or if that could not be ascertained, upon the treasurer of the county wherein he had been apprehended. Sec. 7 of 3 & 4 Vict. c. 54, in amending this clause in the Act of George IV., expressly re-enacted the provision for cases where the lunatic's place of settlement was known, but omitted any mention of the alternative case provided for by the earlier statute. The 3rd section of 3 & 4 Vict. c. 54, which added misdemeanours to the offences comprised in 39 & 40 Geo. III. c. 94 (*sup.* p. 792), made the provisions of 9 Geo. IV. c. 40, sec. 54, applicable as to maintenance, &c., to cases of misdemeanour. But as the Act of 8 & 9 Vict. c. 126, sec. 1, repealed the whole of 9 Geo. IV. c. 40, there was not in force any statutory provision, so far as Queen's pleasure lunatics, other than misdemeanants, were concerned, to cover cases where the lunatic's place of settlement could not be ascertained.

Criminal Lunatics Act 1840.

No statutory provision—except as regards misdemeanour—where place of settlement not ascertainable.

No provision was made for the maintenance of cases under sec. 4 of 39 & 40 Geo. III. c. 94 (*inf.* p. 813, persons endeavouring to gain admittance to the sovereign).

Expenses under Lunatics Removal (India) Act 1851.

The expense of conveyance, and the maintenance of cases under the Lunatics Removal (India) Act 1851, *post*, were under sec. 3 of that statute (as they still are, cp. sec. 10, subs. (4) of the Criminal Lunatics Act 1884, *post*) borne by the Indian Government.

Persons becoming insane while in confinement.

In regard to persons becoming insane while in prison, or in any other place of confinement, an order could be made on the overseers of the parish in which the settlement was adjudged (or the guardians of the union in case the parish was comprised in a union) to pay all reasonable charges for the inquiry into sanity and for conveyance to an asylum or receptacle for insane persons, and such weekly allowance as two justices might direct for maintenance, but such order could not include the cost of ascertaining the settlement. If the place of settlement was unascertainable, then the order might be made against the treasurer of the county, city, borough, or place where such persons were imprisoned. The Acts under which such payment was provided for were 3 & 4 Vict. c. 54, secs. 1 and 2, 23 & 24 Vict. c. 75, sec. 10 (Criminal Lunatics Asylum Act 1860, *post*), and 27 & 28 Vict. c. 29, secs. 1, 2, 4, and 5.

Except in case of Bethlem, liability for maintenance of criminal lunatic thrown on place of maintenance.

It thus appears that (except in the case of Bethlem Hospital, *ante* p. 800), before the passing of the Prisons Act 1877, the law did not contemplate the State paying for the maintenance of any criminal lunatic, the liability being in every case thrown in the first instance upon the place of settlement. The payments made out of Imperial funds were consequent upon the conditions of the law, as indicated above, or resulted from the fact that the Government did not, in

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certain cases, exercise their legal right of enforcing their claim against the local authorities.

Expenses authorised by Treasury.

The Treasury had accordingly authorised the following expenses in connection with orders for maintenance, which it was decided could not be recovered from local authorities, to be paid for out of Imperial funds: (1) expenses of inquiry into settlement; (2) expenses of conveyance from prison to asylum of all Queen's pleasure lunatics, (other than persons acquitted of misdemeanour); (3) expenses of maintaining criminal lunatics (*a*) in cases where the unexpired portion of their sentence was so short as to make it undesirable to obtain order, (*b*) in cases up to date of obtaining order, (*c*) in cases where their settlements were either in Scotland or Ireland, (*d*) in cases of all Queen's pleasure lunatics (other than persons acquitted of misdemeanour) whose settlements could not be ascertained; (4) the expenses (undertaken voluntarily) of the maintenance of all convicts who became lunatic in prison during the currency of their sentence of penal servitude. In addition to these expenses there was a capitation grant of 4s. a week for each pauper lunatic (including criminal lunatics who were paupers).

(1) Inquiry into settlement.

(2) Conveyance to asylum.

(3) Maintenance.

(4) Voluntary maintenance of convicts becoming lunatic in prison.

Capitation grants for paupers.

Original principle.

Abandoned in case of lunatic convicts.

The original principle—viz. to make the parish or county responsible for the maintenance of every criminal lunatic—had thus in many cases broken down and been abandoned in the case of lunatic convicts. It was, however, still enforced in the case of ordinary prisoners becoming lunatics—a practice which had become very anomalous in character since the Prisons Act of 1877 came into operation. An illustration of this was given in evidence before the Departmental Commission.[1] A female prisoner was tried at Surrey Sessions on 6th December 1880, and for convenience was lodged in Westminster Prison for 22 days, whence, becoming insane, she was removed to Surrey County Lunatic Asylum. It being impossible to find the lunatic's settlement, and the county of Middlesex thereby becoming legally liable for her maintenance, an order was made on that county. Middlesex was thus charged with the maintenance of a lunatic really belonging to Surrey, and the cost of maintenance was 14s. a week in Middlesex instead of 10s. 6d. in Surrey.

Enforced as regards ordinary prisoners becoming lunatic.

The main conclusions of the Departmental Commission were as follows:[2]—

Association of criminal with pauper lunatics not extensive.

"(1) That the association of persons who are legally or technically criminal lunatics with pauper lunatics does not take place to a large extent.[3]

Necessity for agreements.

(2) That, in order to remove complaints arising out of such association, agreements might be entered into by the Prison Commissioners with conveniently situated county and borough asylums to receive from local prisons those insane prisoners who would not be willingly received until after the expiration of their sentence by the asylums of their own counties, to be maintained in such selected asylums at the charge of the State; and failing such agreement,

[1] Report, par. 34, p. 15, and Ans. 2080.
[2] Report of 1882, c. 3418, pp. 20, 21.
[3] As to this subject, see notes to sec. 7 of the Criminal Lunatics Act 1884, *post.*

insane prisoners from local prisons should be sent to a criminal lunatic asylum.[1]

Specially dangerous lunatics.

(3) That if it is necessary to make special provision for specially dangerous pauper lunatics, the proper course is for the local authorities of counties and boroughs, by united action, to build one or more asylums designed to receive such specially dangerous lunatics.

Powers of Secretary of State.

(4) That it is desirable that the Secretary of State should have wide discretionary powers in the disposal of criminal lunatics according to the requirements of their condition, and that his power to discharge them absolutely or conditionally, and his power to place them in county, borough, or other public asylums, are useful powers, which may be executed with safety to the public, and without injury to any other class of lunatics.[2]

Warrant to show period of expiration.

(5) That the warrants of the Secretary of State under which criminal lunatics are sent to county and borough asylums should show by their terms that they cease and determine whenever the lunatics are no longer in the custody of the State by the completion of their sentence or otherwise.[3]

Removal of Scotch lunatics.

(6) That the Secretary of State should be empowered to remove those Scotch lunatic convicts at Broadmoor whose sentences have expired to Perth General Prison, to be afterwards distributed, or direct to a district lunatic asylum; and to discharge the military and naval patients there whose sentences have expired to the asylums of their places of settlement, or in cases where their settlement cannot be ascertained, of the districts where they were enlisted.[4]

Systematic revision.

(7) That there should be a systematic revision of the condition and circumstances of all Queen's pleasure lunatics at the end of each year, and that no such person should be detained more than three years in custody without the issue of an order to the Home Secretary confirming the order.[5]

Recommendation against licensed houses.

(8) That it is not desirable that criminal lunatics should be provided for or boarded in licensed houses.[6]

Responsibility of Government for maintenance.

(9) That the Government should undertake and be responsible for the maintenance of all persons who are legally criminal lunatics in whatever manner or place they are provided for.[7]

Woking prison.

(10) That the irregular detention of insane convicts at Woking Prison should cease, but that the wing set apart for that purpose should be recognised under the Broadmoor Act as an asylum for criminal lunatics, unless it be thought more desirable to utilise Broadmoor.

Broadmoor to be reserved for special cases.

(11) That Broadmoor should be reserved, even more than it is at present, for cases requiring special care and treatment, either Queen's pleasure lunatics, or Secretary of State's lunatics, such as prisoners certified to be insane after being sentenced to death.

[1] Note 3, p. 802.
[2] Sec. 5 of Act of 1884, *post*.
[3] Sec. 7, *ib.*
[4] Cp. sec. 8, subss. (3) and (4) of Criminal Lunatics Act 1884, *post*.
[5] Cp. sec. 4 of Criminal Lunatics Act 1884, *post*.
[6] Sec. 16 (definition of asylum), Criminal Lunatics Act 1884, *post*.
[7] As to incidence of maintenance under the old law see note to subs. (1) of sec. 10 of the Criminal Lunatics Act 1884, *post*.

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Consolidation of existing laws.

(12) That the existing laws relating to criminal lunatics in England and Wales are very complicated and perplexing, and that it is most desirable to consolidate and amend them.[1]

Imbeciles.

(13) That the question relating to the care and custody of imbeciles who are habitual criminals is found to be of so wide a character and to have possible results of such magnitude, that it is not desirable to delay our Report on the other subjects of the inquiry until complete evidence on all branches of this question could be obtained."

Trial of Lunatics Act 1883.

The remaining points which deserve notice in such an historical summary as the present are (1) the Trial of Lunatics Act 1883 (46 & 47 Vict. c. 38), *post*, which, repealing 39 & 40 Geo. III. c. 94, sec. 1, *ante*, and 3 & 4 Vict. c. 54, sec. 3, substituted for the old verdict of acquittal on the ground of insanity, the modern special verdict of guilty, but insane at the time of committing the offence; (2) the Colonial Prisoners Removal Act 1884 (47 & 48 Vict. c. 38), *post*, making provision for the removal of any criminal lunatic for the sake of his health or for safe custody from any British possession to any other British possession or to the United Kingdom; and (3) the Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64), *post*, amending and partially consolidating the criminal lunacy laws in accordance with the recommendations of the Report of the Departmental Commission of 1880.

Colonial Prisoners Removal Act 1884.

Criminal Lunatics Act 1884.

Whereas.—As to the reason for this enactment, see *ante* p. 795.

Law of Henry VIII. as to high treason.

High treason.—The statute 33 Hen. VIII. c. 20 enacted "that if any commit high treason while they are in good, whole, and perfect memory, and after examination become *non compos mentis*, and it be certified by four of the Council that at the time of the treason they were of good, sound, and perfect memory, and then not mad nor lunatic, and afterward became mad, then they shall proceed to trial."

Repealed by 1 & 2 Philip and Mary.

This barbarous statute was, however, repealed by 1 & 2 Philip and Mary, c. 10. These statutes dealt with cases of supervening insanity; the present section deals with cases of insanity at the time of committing an offence. This section did not apply in cases of misdemeanour; but that defect was remedied by 3 & 4 Vict. c. 64, sec. 3 (see *inf.*).

Unsound mind at the time of committing the offence.—See summary of law as to criminal responsibility of the insane, *post* p. 885. In the Trial of Lunatics Act 1883, sec. 2, subs. (1), *post*, the corresponding words are "insane so as not to be responsible according to law."

Not guilty on ground of insanity.

Not guilty of such offence.—Under the Trial of Lunatics Act 1883, *post*, the verdict is "guilty, but acquitted on the ground of insanity."

Power to detain dangerous lunatics at common law.

It may be dangerous to permit, etc.—There was power to detain such persons at common law; but see *ante* p. 795 as to the defects and inconveniences of the arrangements for their safe custody.

The jury shall be required.—See note to "not guilty of such offence," *sup.* It was not enough for the jury to find that the prisoner was

[1] Criminal Lunatics Act 1884, *post*.

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insane at the critical period. They must also find that *he did the act imputed to him.* This point was raised in *Reg.* v. *Oxford.*[1] The prisoner was indicted for treason in having discharged at the Sovereign pistols *loaded with powder and certain bullets.* The jury returned the following verdict: "We find the prisoner Edward Oxford guilty of discharging the contents of two loaded pistols at Her Majesty, but *whether they were loaded with ball or not there is not satisfactory evidence;* and that the prisoner was of unsound mind at the time of committing the offence." Upon this a question arose whether the prisoner could be kept in custody or not under the present section. It was contended on his behalf that if the pistols were not proved to have been loaded, there was no compassing the Queen's death, and consequently no treason. Denman, C.J., took this view. "The statute must mean," said his lordship, "that the jury must find that the act has been done by the prisoner which fixes him as a criminal unless he is a lunatic." The jury altered their verdict so as to obviate the difficulty, and hence a formal decision of the point was not required. Under the Trial of Lunatics Act 1883, sec. 2, subs. (1), *post*, the jury are to return a special verdict that the accused was guilty of the act or omission charged against him, but insane at the time when he did the act, or made the omission. It is therefore still clearly necessary that they should be satisfied that he did or omitted to do everything that in law is required to make the act or omission a criminal offence.

Jury must find lunatic did act imputed to him.

Oxford's case.

Trial of Lunatics Act 1883.

A grand jury have no authority by law to ignore a bill on the ground of insanity, though it appear from the testimony of the witnesses examined by them on the part of the prosecution that the accused was insane, but if they believe that the act done would have amounted to murder if done by a person of sound mind, it is their duty to find a true bill, otherwise the Court cannot order the detention of the party during the pleasure of the Crown.[2]

Position of grand jury.

Acquitted by them.—See note to "not guilty of such offence," *sup.*

Strict custody . . . until His Majesty's pleasure be known.—This Act was obviously intended to be supplemented by further legislation regulating and providing for the care, custody, etc., of criminal lunatics. No such legislation was, however, forthcoming until 1840, and no provision of any kind for the separate treatment of criminal lunatics was made till 1814 (*v. ante* p. 796). In Appendix No. 4 to the Report of the Select Committee of 1807,[3] two cases are mentioned of prisoners acquitted, the one in 1800, the other in 1803 at Gloucester Assizes, of criminal charges on the ground of insanity, who were remanded by the Court to the county gaol, there to be kept in strict custody until His Majesty's pleasure be known, and as to whom that pleasure had not been signified at the time when the Committee presented its Report. The observations of Sir George Paul on this state of matters are worth quoting; they occur in Appendix No. 4 to the Report of 1807.[4] "It seems a great stretch of legislative authority to empower a Court of Justice, on the acquittal of a man who in a fit of insanity

"Strict custody" under Act of 1800.

Former delay in signification of "His Majesty's pleasure."

Sir Geo. Paul's observations.

[1] 1840, 9 C. & P. 525.
[2] *Reg.* v. *Hodges*, 1838, 8 C. & P. 195.
[3] 39 of 1807, p. 14.
[4] *Ubi sup.*, at pp. 16, 17.

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may have committed an assault, to imprison him in a common gaol for a time not limited; or indeed, without a decision on his case as a lunatic by the ordinary legal mode of inquiry, to submit him to any kind of constraint for life, deprived of the benefit of the Act of 14 Geo. III.," "intended for the protection of persons in this unhappy situation, and to prevent their being longer deprived of liberty than they are divested of their reasoning faculties; and if it be said that this Act is not intended to mean confinement for life, then we come to the point of our inquiry—when and in what manner is it to be terminated? . . . If this Act is to be continued and followed up to its purpose, if lunatics are to be so confined as not to excite the idea of a criminal punishment, places suited to their case must be constructed and modes of restraint determined, and those places and those modes licensed or otherwise sanctioned by public authority and open to an effective visitation and control such as has been inefficaciously imagined by the Act of 14 Geo. III."

Persons indicted for any offence, and upon arraignment found to be insane, or if upon trial they shall be so found, etc., the Court shall order them to be kept in custody till His Majesty's pleasure be known.

2. And *be it further enacted*, That if any person indicted for any offence shall be insane, and shall upon arraignment be found so to be by a jury lawfully impannelled for that purpose, so that such person cannot be tried upon such indictment, or if upon the trial of any person so indicted, such person shall appear to the jury charged with such indictment to be insane, it shall be lawful for the Court before whom any such person shall be brought to be arraigned or tried as aforesaid, to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody until His Majesty's pleasure shall be known; and if any person charged with any offence shall be brought before any Court to be discharged for want of prosecution, and such person shall appear to be insane, it shall be lawful for such Court to order a jury to be impannelled to try the sanity of such person; and if the jury so impannelled shall find such person to be insane, it shall be lawful for such Court to order such person to be kept in strict custody, in such place and in such manner as to such Court shall seem fit, until His Majesty's pleasure shall be known; and in all cases of insanity so found, it shall be lawful for His Majesty to give such order for the safe custody of such

person so found to be insane, during his pleasure, in such place and in such manner as to His Majesty shall seem fit. Sec. 2.

Be it further enacted.—These words are repealed by the Statute Law Revision Act 1888 (51 & 52 Vict. c. 3).

Any offence.—These words cover *all* offences, whether misdemeanours or felonies, although sec. 1 applied to treason, murder, and felony alone. Accordingly where a person charged with a misdemeanour was found by the jury to have been insane at the time both of the commission of the offence and of the trial, it was held that the judge had power to order him to be kept in custody till His Majesty's pleasure was known.[1] Scope of words "any offence."

Insane, i.e. at the time of arraignment, whether he was so or not at the time of the commission of the offence with which he is charged. The case of insanity at the time of the commission of the offence was dealt with by sec. 1, *ante*, and is now governed by sec. 2, subs. (1) of the Trial of Lunatics Act 1883 (46 & 47 Vict. c. 38), *post*. In the latter section the word "insane" is now qualified by the clause "so as not to be responsible according to law for his actions at the time, etc."[2] Here the qualification is "so that such person cannot be tried upon such indictment." The question would appear to be whether the prisoner has sufficient intelligence to plead to the indictment or understand the course of proceedings, (*v. post* p. 808). Insanity, if apparent or duly established, is a bar to criminal proceedings at any stage. "If a man in his sound memory," says Blackstone,[3] "commits a capital offence, and before arraignment for it he becomes mad, he ought not to be arraigned for it: because he is not able to plead to it with that advice and caution that he ought; and if, after he has pleaded, the prisoner becomes mad, he shall not be tried, as he cannot make his defence. If, after he has been tried and found guilty, he lose his senses before judgment, judgment shall not be pronounced; and if after judgment he become of non-sane mind, execution shall be stayed; for, peradventure, says the humanity of English law, had the prisoner been of sound memory he might have alleged something in stay of judgment and execution."[4] The present section deals with (1) a person found insane upon arraignment, (2) a person appearing to the jury after arraignment and during trial to be insane, and (3) a person appearing Insane on arraignment. Insanity bar to criminal proceedings at any stage. Scope of section.

[1] *R.* v. *Little*, 1821, Russ. & Ry. 430.

[2] As to the substantive law of criminal responsibility in mental disease, see *post* p. 885.

[3] 4 Comm. 25, 1 Hale P.C. 34.

[4] Cp. *Frith's case*, 1790, 22 How. St. Tr. 307; *Reg.* v. *Southey*, 1865, 4 F. & F. 864, 872 n. (*a*). The Court will not discharge a prisoner out of custody on common bail on the ground that he was insane at the time of his arrest (cp. *Steel* v. *Alan*, 1801, 2 Bos. & P. 362), or has since become so (cp. *Kernot* v. *Norman*, 1788, 2 T.R. 390; *Watt* v. *Verney*, 4 T.R. 121), nor will bail be discharged on a plea that as their principal has become insane it is impossible for them to surrender him (cp. *Ibbotson* v. *Galway*, 1795, 6 T.R. 133). High treason was made an exception to this by 33 Hen. VIII. c. 20. But that statute was repealed by 1 & 2 Philip and Mary, c. 10.

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to be insane when brought up to be discharged for want of prosecution. If a person who is unfit to plead is by mistake put upon his trial, and his insanity become manifest during the proceedings, the judge may discharge the jury.[1]

Committal to asylum before arraignment.

Upon arraignment.—If a prisoner becomes insane *while on remand or awaiting trial* he need not be arraigned. Under the joint provisions of secs. 2 and 16 of the Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64), the Secretary of State may send to a criminal lunatic asylum any such prisoner who is certified to be insane by two medical practitioners called in at the instance of the visiting justices of the prison (see notes to sec. 2, subs. (1) of the Criminal Lunatics Act 1884).

The plea of inability to plead comes before the Courts under various circumstances.[2]

(1) Unopposed cases.

There may be no opposition at all; the prosecution may itself assert the prisoner's incapacity, and there may be either no appearance for the defence or no objection on the part of the prisoner. Here the proceedings are usually confined to the examination of the medical witnesses who conducted the preliminary inquiry.[3]

Test of capacity to plead.

The test of insanity for this purpose is put in various ways, *e.g.* whether the prisoner sufficiently understands the nature of the offence with which he is charged to plead to it,[4] or whether he knows what is taking place and can distinguish between a plea of guilty and one of not guilty,[5] or whether he is capable of taking a rational part in

[1] Bac. Abr. "Idiot," B., 1 Hale P.C. 36.

[2] Cp. Dr. Orange's article on "Capacity to Plead," in Hack Tuke's *Dictionary of Psychological Medicine*, p. 951.

[3] Cp. Hansard, Parliamentary Debates, 3rd ser. vol. 286, p. 40. Under instructions given by Lord (then Sir Henry) James in 1884, whenever an accused person is brought before justices on a capital charge, the magistrate's clerk communicates with the Director of Public Prosecutions who takes charge of the prosecution, unless he finds that some competent private person or local body has the conduct of it; but in the absence of such proper conductor it is his duty to see that the evidence in every capital case is fully brought before the jury. Moreover, in those cases where insanity in the accused is alleged, full inquiry is made, and in the absence of his or his friends' ability to produce witnesses, the Director of Public Prosecutions procures their attendance.

In carrying out these instructions the general practice of the Director of Public Prosecutions is to apply to medical men of experience and repute, one of whom is usually the medical superintendent of the lunatic asylum for the county in which the accused is in custody, and to request them to examine him with a view to giving evidence at the trial, and in the meantime to draw up a report as to his mental state. All reasonable means are also taken by the Director of Public Prosecutions, or his local agent in country cases, to obtain full information as to the prisoner's antecedents, both for the purposes of the medical examination and in order to enable the attendance of the prisoner's witnesses at the trial to be secured. Cp. Dr. Orange's paper on "Procedure" in Hack Tuke's *Psychological Dictionary*, p. 1004. The preliminary medical examination provided for under these instructions may appear *primâ facie* liable to be attended with a double inconvenience. In the first place, it is apt to become the means of eliciting from a prisoner a confession of the crime with which he is charged. Dr. Orange (*ubi sup.*, at p. 1005), gives some most useful practical hints to medical examiners for the avoidance of this danger. In the second place, it may seem to interfere with the liberty of a prisoner to present his case to the jury in his own way. But this inconvenience is rather of a theoretical than of a practical character.

[4] *Reg.* v. *Curragh*, 1889. Dr. Orange's article, *v. sup.*, at p. 952.

[5] *Reg.* v. *Lawrence*, 1890. Dr. Orange's article, *v. sup.*, at p. 951.

his trial.[1] These are not, however, substantially different tests. The pith and essence of each is the question whether the prisoner is capable of standing his trial; and it is on that general issue that the verdict is returned.[2]

If the jury answer this question in the negative, the customary order for the prisoner's detention during Her Majesty's pleasure is at once made.

(2) Cases in which incapacity asserted by defence and denied by prosecution.

In a second class of cases a prisoner's incapacity to plead is asserted by the defence and denied by the prosecution. Here the initiative is taken by the defence; witnesses are called in support of the plea, examined and cross-examined; counsel for the prosecution and the defence address the jury, and the judge then submits to them the issue of the prisoner's capacity.[3] If the jury find the accused unfit to plead, the usual order is made; otherwise the trial proceeds, the prisoner being of course at liberty to raise the further plea that he was of unsound mind at the time of the commission of the act with which he is charged.[4] Where a prisoner on being called upon to plead stands mute and exhibits symptoms of insanity which counsel for the prosecution is instructed are feigned, the initiative rests with the prosecution, and then counsel for the prisoner may call witnesses to rebut any inference of art or design. If the prosecution fail to do this, the judge will endeavour to ascertain the truth by examining the officers of the prison, or will postpone the trial.[5]

Where a prisoner stands mute and exhibits symptoms of insanity.

(3) Cases in which incapacity to plead asserted by prosecution and denied by defence.

In a third, and much smaller class of cases, a prisoner's incapacity to plead is asserted by the prosecution and denied by himself. Here the prosecution takes the initiative, and the prisoner has the right to cross-examine the witnesses called to prove his unfitness to plead. Generally speaking, the plea of incapacity is established;[6] but occasionally the accused succeeds in maintaining his objection.[7] The danger of such objections being lightly accepted is that the prisoner may at once plead guilty,[8] in which case there is no alternative open to the Court but to pass sentence of death, leaving the matter to be dealt with by the Home Office.[9]

(4) Cases in which the prisoner is mute on arraignment.

In a fourth class of cases the accused may be mute on arraignment. Here the issue usually left to the jury is simply whether the prisoner is mute of malice or by the visitation of God. But the form adopted by Mr. Baron Alderson in *Reg.* v. *Goode*,[10] and also in

[1] *Reg.* v. *Mills*, 1884. Dr. Orange's article, *v. sup.*, at p. 953, per Baron Pollock.

[2] As to the legal test of lunacy, see *ante* p. 5.

[3] As to the forms in which this issue is stated, see observations on the first class of cases, *sup.*

[4] *Reg.* v. *Taylor*, 1888, *Leeds Mercury*, 17th February 1888; and Dr. Orange's article, *ubi sup.*, at p. 953; *Reg.* v. *Cooper*, 1887, *Norfolk News*, 19th November 1887.

[5] *Reg.* v. *Davies*, 1853, 6 Cox C.C. 326.

[6] Cp. *Reg.* v. *Mauerberger*, 1887, C.C.C. February 1887; and article "Capacity to Plead," *ubi sup.*, at p. 959.

[7] *Reg.* v. *Douglas*, 1885, *Maidstone and Kent County Standard*, 17th July 1885; *Reg.* v. *Cullam*, 1888, *Hertfordshire Standard*, 4th August 1888; and *ubi sup.*, at p. 960.

[8] *Reg.* v. *Swatman*, 1876, *ubi sup.*, at p. 961.

[9] Cp. *Reg.* v. *Cullam*, note 12.

[10] 1837, 7 A. & E. 536.

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R. v. *Pritchard*,[1] is sometimes followed,[2] viz. (1) is the prisoner mute of malice or not? (2) can he plead to the indictment or not? (3) is he of sufficient intellect to comprehend the course of proceedings on the trial so as to make a proper defence or not? or is he sane or not?[3] The issue of mute by malice or not must, however, be put in all cases. If the jury find the prisoner mute of malice, a plea of not guilty is entered, and the trial proceeds. If they find him mute by the visitation of God—a term which in this connection principally refers to mental disease, and not to congenital physical incapacity, as a cause of muteness—the prisoner's detention during pleasure may be ordered. The issues "is the prisoner able to plead?" "has he sufficient intellect to comprehend the proceedings?" and "is he sane or not?" owe their use severally to the fact that at common law a man who by reason of mental disease is unable to plead or to understand the proceedings at his trial cannot be tried, and to the wording of the Criminal Lunatics Act 1800 (39 & 40 George III. c. 94, sec. 2, *v. sup.*), that a person who "on arraignment," *i.e.* on being called upon to plead, is found by a jury to be "insane," shall not be tried but kept in confinement during pleasure. The issues in question conveniently raise these common law and statutory defences. It must not, however, be supposed that a man cannot be tried "on the merits" unless he is sane at the time of the trial. There is no authority for any such proposition, and the case of Macnaughton (see p. 888), who was undoubtedly insane both at the time when he shot Mr. Drummond and throughout his trial, is a clear authority to the contrary. The question "is he sane or not?" is left to the jury, as already mentioned, in consequence of the language of the Criminal Lunatics Act, but it is their duty to answer it with strict reference to the standard indicated by the law, viz. is the prisoner able to plead or to comprehend the course of proceedings at his trial?

Meaning of "visitation of God."

There may be trial on the merits though prisoner insane.

Question "is he sane or not?" why left to jury.

Again, if no question as to the prisoner's capacity to plead be raised till after his trial upon the merits, the two questions as to his fitness to plead and his responsibility for the crime charged against him may be left to the jury together at the end of the trial.[4]

When question of fitness to plead and responsibility for crime may be put together.

Found so to be.—The jury may form their own judgment of the state of the prisoner's mind from his demeanour while the inquest is being taken, and may thereupon find him to be insane without any evidence being led; and if a prisoner shows strong symptoms of insanity during the inquest, it is unnecessary to ask him whether he will cross-examine the witnesses or offer any remarks or evidence.[5]

On what judgment may be founded.

[1] 1836, 7 C. & P. 304.

[2] *Reg.* v. *Harper*, 1888, cited by Dr. Orange, *ubi sup.*, at p. 962.

[3] *R.* v. *Dyson*, 1836, 7 C. & P. 305 n.; and cp. *Thompson's case*, 1827, 2 Lewin, 137; *Reg.* v. *Whitfield*, 1850, 3 C. & K. 121; *Reg.* v. *Israel*, 1847, 2 Cox C.C. 263; and *Reg.* v. *Berry*, 1876, 1 Q.B.D. 447.

[4] *Reg.* v. *Southey*, 1865, 4 F. & F. 864; and see 39 & 40 Geo. III. c. 94., sec. 2, *sup.*

[5] *Reg.* v. *Goode*, 1837, 7 A. & E. 536. In this case the oath administered to the jury was in the following terms: "You shall diligently inquire and true presentment make, for and on behalf of our Sovereign Lady the Queen, whether John Goode, the defendant, who stands indicted for a misdemeanour,

Question of sanity at trial, how to be determined.

A jury lawfully impannelled for that purpose.—The question of a prisoner's sanity at the time of trial might be tried by the jury impannelled to try the indictment against him,[1] or by an inquest of office to be returned by the sheriff of the county wherein the Court sits,[2] or, being a collateral issue, the fact might be pleaded and replied to *ore tenus*, and a *venire* awarded returnable *instanter*, in the nature of an inquest of office.[3]

Plea of insanity to be put in after prisoner has pleaded.

Reg. v. *Southey.*

Upon the trial . . . such person shall appear.—These words point to the issue of a prisoner's sanity being raised after he has pleaded to the charge against him. The plea of insanity should, however, be put in before the prisoner has pleaded. In *Reg.* v. *Southey*[4] a plea that the prisoner was insane at the time of trial was not set up till the trial had begun, and the first witness for the prosecution had been examined. Mellor, J., on the grounds that it would be manifestly inconvenient to recommence the trial of the collateral issue, and that the evidence as to the prisoner's sanity at the time of arraignment appeared to be very much mixed up with the question as to his sanity at the time of the offence with which he was charged, allowed the case to proceed, and put both questions at the end of the trial—whether the prisoner was in a fit state to be tried, and whether he was guilty or not guilty on the ground of insanity? Moreover, Hale[5] has the following passage: "In case a man in a phrensy happens by some oversight, or by means of the gaoler, to plead to his indictment, and is put upon his trial, and it appears to the Court upon his trial that he is mad, the judge in his discretion may discharge the jury of him, and remit him to gaol to be tried after the recovery of his understanding, especially in case any doubt appears upon the evidence touching his guilt, and this *in favorem vitae;* and if there be no colour of evidence to prove him guilty, or if there be a pregnant evidence to prove his insanity at the time of the fact committed, then . . . it is fit that the trial proceed in order to his acquittal." The proper time for setting up a plea of insanity at the time of trial is before the prisoner is called upon to plead.

Counsel for defendant may plead insanity against prisoner's wish.

Counsel defending a prisoner may set up on his behalf the defence of insanity, although the prisoner objects to the plea, and strenuously asserts that he is not insane. In *Reg.* v. *Pearce*,[6] the case in which this rule of practice was laid down, Mr. Justice Bosanquet, the presiding judge, allowed the prisoner to suggest questions to be put by him to the witnesses for the prosecution to negative the supposition that he was insane, and also allowed additional witnesses to be called on his behalf for the same purpose.

be insane or not, and a true verdict give according to the best of your understanding: So help you God." Cp. *Turner's case,* 1830, Shelf. Lun. 597.

[1] 1 Hale P.C. 33, 35, 36; 1 Hawk. P.C. c. 1, sec. 4, note 5.

[2] 1 Hawk. P.C. c. 7, sec. 4; 1 And. 107; 1 Sav. 50, 56; 1 Hale P.C. 35.

[3] Fost. 46; Kel. 13; 1 Lev. 61; 1 Sid. 72. The proceeding by inquest *ex officio* was recommended in cases of importance, doubt, or difficulty (1 Hale P.C. 35; 1 Sav. 56; 1 And. 154; 1 Hawk. P.C. c. 1, sec. 4, note 5).

[4] 1865, 4 F. & F. p. 880.

[5] 1 P.C. 36, per Foster, J.; 18 St. Tr. 411; 1 Russ. Crimes, p. 13.

[6] 1840, 9 C. & P. 667.

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Costs of defence of lunatic so found by inquisition.

Lawful for the Court . . . to order, etc.—Where a person who had been found a lunatic under a commission was afterwards tried for murder, and acquitted on the ground of lunacy, and ordered by the judge to be detained in custody as a dangerous lunatic, and his committee presented a petition to have certain sums allowed out of his estate for his support and the expense of his defence on the trial, and also that he might be removed out of gaol to a proper receptacle for lunatics, Lord Chancellor Eldon said there was a difficulty in the way, but ordered such sums to be paid, with liberty for the committee to make any application he thought proper respecting the custody of the lunatic to the King in Council.[1]

Strict custody.—See notes to corresponding words in sec. 1, *ante.*

Any offence.—See notes to corresponding words in this section, *ante.*

Insane.—Here "insane" probably means not in a state in which he would be held responsible for his actions. See note to "insane," *ante.*

A jury to be impannelled.—See notes to corresponding words, *ante.*

In such place, etc.—See notes to corresponding words, *ante.*

3. *And be it further enacted that if any person shall be discovered and apprehended under circumstances that denote a derangement of mind and a purpose of committing some crime for which, if committed, such person would be liable to be indicted, and any of His Majesty's justices of the peace before whom such person may be brought shall think fit to issue a warrant for committing him or her as a dangerous person suspected to be insane, such cause of commitment being plainly expressed in the warrant, the person so committed shall not be bailed except by two justices of the peace, one whereof shall be the justice who has issued such warrant, or by the Court of General Quarter Sessions, or by one of the Judges of the Courts in Westminster Hall, or by the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal.*

Be it further enacted.—This section is repealed by sec. 1 of the Criminal Lunatics Act 1838 (1 & 2 Vict. c. 14), *post.*

Discovered and apprehended.—It was necessary that there should

[1] *Ex parte Hill*, 1813, Coop. C.C. 54.

be both discovery and apprehension before the magistrate could interfere.

A warrant.—The form of the warrant is stated in Burn's *Justice*, by Chitty, vol. iii. p. 699.

Clause not too strictly construed.

Plainly expressed.—The object of the section was to prevent the commission of crimes by insane persons, or persons reasonably suspected to be insane. This clause was therefore not too strictly construed. In *ex parte Gourlay*,[1] for instance, it was held that a cause of commitment was sufficiently expressed by a warrant stating that "A. had been discovered and apprehended under circumstances that denoted a derangement of mind and a purpose of committing a crime (that is to say, an assault and breach of the peace) for which, if committed, he would be liable to be indicted, and that it appeared to the justice that he ought to issue a warrant for committing him as a dangerous person suspected to be insane."

ex parte Gourlay.

The Privy Council or one of the Secretaries of State may cause persons appearing to be insane and endeavouring to gain admittance to His Majesty to be kept in custody till the insanity of such persons be inquired into in the manner herein directed, etc.

4. And whereas insane persons have, at different times, endeavoured to gain admittance to His Majesty's presence, by intrusion on His Majesty's palaces and places of residence and otherwise, and His Majesty's person may be endangered by reason of the insanity of such persons: Be it therefore enacted, That if any person who shall appear to be insane shall endeavour to gain admittance to His Majesty's presence, by intrusion on any of His Majesty's palaces or places of residence, or otherwise, so that there may be reason to apprehend that His Majesty's person may be endangered, it shall be lawful for His Majesty's Privy Council, or one of His Majesty's principal Secretaries of State, to cause such person to be brought before them or him; and if upon examination it shall appear that there is reason to apprehend such person to be insane, and that the person of His Majesty may be endangered by reason of the insanity of such person, it shall be lawful for His Majesty's Privy Council, or one of His Majesty's principal Secretaries of State, to order such person to be kept in safe custody in such place, and in such manner, as according to circumstances shall be ascertained; and

[1] 1828, 1 Mann. & Ryl. 619-624.

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for such purpose, it shall be lawful for the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal of Great Britain, to award a commission under the said Great Seal, directed to certain commissioners to be therein named, to inquire into the sanity of such person, and whether the person of His Majesty may be endangered by reason of the insanity of such person, and for such purpose, to direct the sheriff of the county where such person shall be to summon a jury to try the sanity of such person, and whether His Majesty's person may be endangered by reason of the insanity of such person, in the same manner as juries are summoned to try the sanity of persons on a commission in the nature of a writ de lunatico inquirendo; and if upon the inquisition so taken it shall be found that such person is so far insane that the person of His Majesty may be endangered by reason of the insanity of such person, it shall be lawful for the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal for the time being, to take order for the safe custody of such person so long as there shall be reason to apprehend that the person of His Majesty may be endangered by reason of the insanity of such person; and if it shall afterwards appear that such person shall have recovered the use of his or her reason, so that there shall be no longer any reason to apprehend any danger to His Majesty's person from the insanity of such person, it shall be lawful for the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal for the time being, to inquire into the fact by such means as to him or them shall seem proper; and if it shall appear to his or their satisfaction that such person has so far recovered the use of his or her reason, that there is no ground for apprehending any danger to His Majesty's person from the insanity of such person, it shall be lawful

for the said Lord Chancellor, Lord Keeper, and Lords Commissioners respectively, to direct such person to be discharged from custody, either absolutely or conditionally, or under restrictions, as to him or them shall seem meet.

This section is still unrepealed, but it has practically fallen into desuetude.

B

THE CRIMINAL LUNATICS ACT 1838
(1 & 2 Vict. c. 14).

An Act to repeal so much of an Act of the thirty-ninth and fortieth years of King George the Third as authorises magistrates to commit to gaols or houses of correction persons who are apprehended under circumstances that denote a derangement of mind and a purpose of committing a crime; and to make other provisions for the safe custody of such persons. [30th March 1838.]

Whereas by an Act passed in the thirty-ninth and fortieth years of the reign of His late Majesty King George the Third, intituled "An Act for the Safe Custody of Insane Persons charged with Offences," it was amongst other things enacted "that if any person should be discovered and apprehended under circumstances that denote a derangement of mind and a purpose of committing some crime for which, if committed, such person would be liable to be indicted, and any of His Majesty's justices of the peace before whom such person may be brought shall think fit to issue a warrant for committing him or her as a dangerous person suspected to be insane, such cause of commitment being plainly expressed in the warrant, the person so committed shall not be bailed 39 & 40 Geo. III. c. 94.

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except by two justices of the peace, one whereof shall be the justice who has issued such warrant, or by the Court of General Quarter Sessions, or by one of the Judges of His Majesty's Courts in Westminster Hall, or by the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal"; and it is expedient to repeal so much of the said Act as has been hereinbefore recited, and to make other provisions for the safe custody of such persons: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so much of the said Act as is hereinbefore recited shall be and is hereby repealed.[1]

Recited Act in part repealed.

Persons in custody under the repealed provisions of recited Act, or hereafter apprehended as insane or dangerous idiots, may be sent to lunatic asylums.

2. . . . If at any time after the passing of this Act any person shall be discovered and apprehended under circumstances that denote a derangement of mind and a purpose of committing some crime for which, if committed, such person would be liable to be indicted, it shall and may be lawful for any two justices of the peace of the county, city, borough, or place where such person shall be so apprehended to call to their assistance a physician, surgeon, or apothecary, and if upon view and examination of the said person so apprehended, or from other proof, the said justices shall be satisfied that such person is insane or a dangerous idiot, the said justices, if they shall so think fit, by an order under their hands and seals, directed to the constable or overseers of the poor of the parish, township, or place where such person shall be apprehended, shall cause the said person to be conveyed to and placed in the county lunatic asylum, provided there be one situated

[1] This section was in turn repealed by the Statute Law Revision Act 1874 (No. 2), 37 & 38 Vict. c. 96, but section 3 of the Act of 1800 was not revived.

within or belonging to the county in which such person shall be apprehended, and if there be no such asylum, then to some public hospital, or some house duly licensed for the reception of insane persons; and it shall be lawful for the said justices to inquire into and ascertain, by the best legal evidence that can be procured under the circumstances of personal legal disability of such insane person or dangerous idiot, the place of the last legal settlement of such person; and it shall and may be lawful for such two justices to make an order under their hands and seals upon the overseers or churchwardens of such parish, township, or place where they adjudge him or her to be legally settled, to pay all reasonable charges of examining such person, and conveying him or her to such county lunatic asylum, public hospital, or licensed house, and to pay such weekly sum for his or her maintenance in such place of custody as they or any two justices shall, by writing under their hands, from time to time direct; and where such place of settlement cannot be ascertained, such order shall be made upon the treasurer of the county, city, borough, or place where such person shall have been apprehended: Provided always, that nothing herein contained shall be construed to extend to restrain or prevent any relation or friend from taking such insane person or dangerous idiot under their own care and protection, if he shall enter into sufficient recognisance for his or her peaceable behaviour or safe custody, before two justices of the peace, or the Court of Quarter Sessions, or one of the Judges of Her Majesty's Courts in Westminster Hall: Provided always, that the churchwardens and overseers of the parish in which the justices shall adjudge any insane person or dangerous idiot to be settled may appeal against any such order to the next General Quarter Sessions of the Peace to be holden for the county where such order shall be made,

Justices may inquire into settlement of lunatics or dangerous idiots, and make order for payment of their maintenance, etc.

If settlement cannot be ascertained.

Nothing herein to prevent relations from taking lunatics under their own care.

Appeal.

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in like manner and under like restrictions and regulations as against any order of removal, giving reasonable notice thereof to the clerk of the peace of the county, riding, or division, or to the town clerk of the city, borough, or place, as the case may be, upon whose rates the burden of maintaining such insane person or dangerous idiot might fall if such order should be invalid, and such clerk of the peace or town clerk shall be respondent in such appeal, which appeal the justices of the peace assembled at the said General Quarter Sessions are hereby authorised and empowered to hear and determine in the same manner as appeals against orders of removal are now heard and determined.

. . . *If at any time.*—The hiatus in the section, as printed, represents clauses repealed by the Statute Law Revision Act 1874 (No. 2), 37 & 38 Vict. c. 96.

After the passing of this Act.—Viz. 30th March 1838.

Any person may apprehend lunatic.

Discovered and apprehended.—Apparently any person may apprehend a lunatic under this section.

Circumstances must denote derangement and purpose to commit indictable offence.

Under circumstances, etc.—In order to justify the apprehension and bring the section into operation, the circumstances must denote both a derangement of mind *and* a purpose of committing some indictable offence. Under sec. 15 of the Act of 1890, *ante*, any lunatic wandering at large may be apprehended, brought before a justice, and sent to an institution for lunatics. Lunatics may also be removed to workhouses in urgent cases (sec. 20, *ib.*, *ante*), or by order of a justice (sec. 21, *ib.*, *ante*), if necessary for the public safety. It is probably better to move under one of these sections, unless in very clear cases, because of the protection given by sec. 330 of the Act of 1890, *ante*, to persons putting the Act in force.

Threat to commit suicide within section.

It is conceived that a person threatening to commit suicide might be dealt with under this section. Where A., in attempting to commit suicide, is interrupted by B., who meets with his death in a struggle thus originating, he is liable for the murder of B., on the principle [1] that where a man is engaged in the commission of one felony and casually, and without any premeditation on his part, commits another and different felony, he is guilty of the second felony. A plea of insanity, however, is of course available in such a case.[2]

[1] Cp. *R.* v. *Dyson*, 1823, Russ. & Ry. 523.

[2] *Reg.* v. *Jones*, 1839, 3 J.P. 357. According to the headnote in this case, a statement by A., made immediately after the crime, and when he was still labouring under an aberration of intellect as to what he had done to B., would probably not be evidence against him; and query whether he could be convicted

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Any two justices, etc.—They must have jurisdiction in the county, city, borough, or place where the alleged lunatic is apprehended.

"Call to their assistance."

Call to their assistance.—See notes to corresponding words in sec. 16 of the Act of 1890, *ante*. In sec. 16 the justices are obliged to call in a medical practitioner. Here it is only "lawful" for them to do so. It is not necessary that the physician, etc., called in should certify, as under sec. 16 of the Act of 1890. The remuneration of the medical practitioner is provided for by this section.

Upon view and examination . . . or from other proof.—A personal examination of the alleged lunatic by the justices is optional. Under sec. 16 of the Act of 1890, *ante*, it is imperative.

Satisfied.—See note to corresponding word in sec. 16 of the Act of 1890, *ante*.

Semble, justices must be satisfied as to criminal purpose.

Insane or a dangerous idiot.—It is conceived that the justices must be satisfied not only as to the insanity, but also as to the criminal purpose, of the person apprehended. See note to "under circumstances," *sup.*

Order.—No form of order is prescribed. Form 12, Sched. ii. of the Act of 1890, *ante*, may be taken as a model.

Hands and seals.—These formalities are dispensed with in the case of justices' orders under the Lunacy Act 1890, in virtue of the Lunacy Act of 1855 (18 & 19 Vict. c. 105), sec. 15.

Semble, duty cannot be delegated.

The constable.—*Semble*, the duty cannot be delegated as under sec. 2, subs. (1) of the Act of 1891, *ante* p. 125; neither do the provisions of subs. (2) of that section, *ante* p. 120, as to where there are two or more relieving officers in a union, apply.

When jurisdiction may be exercised.

And it shall be lawful.—This jurisdiction may be exercised either at, or subsequent to, the time of making the order for conveying the lunatic to the asylum.[1]

The said justices.—The justices who inquire into the settlement of a lunatic must, therefore, be those who have made the order for his conveyance to an asylum. See note to "any two justices," below.

"Personal legal disability," meaning of.

Personal legal disability.—What is referred to apparently is the disability of the insane person or idiot himself to give the justices information as to his or her last place of legal settlement. The evidence of a lunatic is not, however, legally inadmissible.[2]

Charges of examining.—See above as to the medical examination.

What justices have jurisdiction.

Form of order.

Or any two justices.—The settlement must be adjudged, and the order for payment of charges, etc., made, by the justices who made the order for the conveyance of the lunatic to an asylum. The order dealing with the weekly maintenance should follow the words of the section—thus, "pay such weekly sum for his (or her) maintenance as we or any two justices" (*semble*, this means having jurisdiction in the

on such a statement alone "inasmuch as it proceeds from the mouth of a witness incompetent on the score of insanity." The evidence in this case was, however, that when A. made the statement in question "he was utterly unconscious and irresponsible." The headnote is too wide. The admissibility of such statements would be a question of fact.

[1] *Reg.* v. *Elsley*, 1850, 15 Q.B. 1025, where a form of order will be found.

[2] *Reg.* v. *Hill*, 1851, 2 Den. C.C. 254, and *ante* p. 683.

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county, city, borough, or place where the lunatic is kept in custody) "shall by writing under our (or their) hands from time to time direct."

When order may be made on county.

Where such place of settlement, etc.—It is only when the justices have inquired into and failed to ascertain the place of settlement that an order for the expenses can be made on the county.[1]

Nothing herein contained.—Cp. sec. 22 of the Act of 1890, *ante*.

Relation or friend.—Cp. sec. 22 of the Act of 1890, *ante*.

Two justices of the peace.—See note to "any two justices," *ante*.

Superintendent of asylum proper person to serve notice.

Appeal.—Inasmuch as the provisions of this section as to appeals come into operation only when an appeal has been commenced, the superintendent of the asylum is a proper person to serve the notice of chargeability and other documents required by the Poor Law Acts to be sent to the overseers of the parish to be affected by the order of adjudication.[2]

Semble, that the appellants are entitled to a copy of the examinations on which orders have been made,[3] and that the statement of particulars of settlement should be signed by the clerk of the peace if the order is obtained by him.

Persons proved not to be insane may be liberated.

3. *If upon examination it shall appear to the physician, surgeon, or apothecary present at the examination of any person in custody at the time of passing this Act as aforesaid that he or she is not an insane person or a dangerous idiot, and that such person may be suffered to go at large with safety, it shall and may be lawful for such medical person and he is hereby required to give a certificate to that effect, signed by him, to the visiting justices of the gaol or house of correction in which such person is in custody, who are hereby required to transmit the same forthwith to Her Majesty's principal Secretary of State for the Home Department, who, if he shall so think fit, shall order the liberation of such person from custody.*

This section was repealed, as spent, by the Statute Law Revision Act 1874 (No. 2), 37 & 38 Vict. c. 96.

Act not to alter laws relating to the discharge of recovered lunatics.

4. Nothing herein contained, except where otherwise expressly mentioned, shall alter the laws relating to the discharge of persons who may cease to be insane or

[1] *Reg.* v. *Elsley*, 1850, 15 Q.B. 1025.
[2] S. C.
[3] Cp. *Reg.* v. *Middlesex*, 1845, 11 J.P. 461.

dangerous idiots from any county lunatic asylum, public hospital, or house duly licensed for the reception of insane persons, nor authorise the removal by any parish officer of any poor person from such asylum, public hospital, or licensed house, without an order for that purpose made by two justices of the peace for the county in which such house shall be situated, after due inquiry into the circumstances of the case, unless such person shall have been discharged as cured. Sec. 5.

5. This Act shall extend only to England and Wales. Act to extend to England and Wales.

6. *This Act shall commence and take effect immediately from and after the passing thereof.* Commencement of Act.

Repealed as unnecessary by the Statute Law Revision Act 1874 (No. 2), 37 & 38 Vict. c. 96.

7. *This Act may be altered, amended, or repealed by any Act to be passed in the present Session of Parliament.* Act may be altered this Session.

Repealed by Statute Law Revision Act 1874 (No. 2), 37 & 38 Vict. c. 96.

C

THE LUNATICS REMOVAL (INDIA) ACT 1851

(24 & 25 Vict. c. 81).

An Act to authorise the removal from India of insane persons charged with offences, and to give better effect to inquisitions of lunacy taken in India.

[7th August 1851.]

Whereas it is expedient to make provision for the several purposes hereinafter mentioned: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the

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advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Short title.

Whereas it is expedient, etc.—The short title to this Act is the Lunatics Removal (India) Act 1851. Cp. Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64), Sched. i., *post.*

Not affected by Colonial Prisoners Removal Act 1884.

The provisions of this statute are not affected by the Colonial Prisoners Removal Act 1884 (47 & 48 Vict. c. 31), see sec. 16, subs. (2), *post.*

Power to remove from India to the United Kingdom persons *of European birth* found guilty of crimes and offences, and acquitted on the ground of insanity.

1. That if any person shall have been or shall hereafter be indicted for or charged with any crime or offence in any court in India, and shall have been or shall hereafter be acquitted of or not be tried for such crime or offence on the ground of his being found to be of unsound mind, and shall by reason of the premises be lawfully in custody in India, it shall be lawful for the person or persons administering the Government of the Presidency in which such person shall be so in custody to order such person to be removed from India to any part of the United Kingdom, there to abide the order of Her Majesty concerning his or her safe custody, and to give such directions for enabling such order to be carried into effect as may be deemed fit and proper.

Original qualification "of European birth" struck out.

Operation of statute practically limited to European British subjects.

If any person.—The original marginal note to this section contained the qualification, for which there is no justification in the text, "of European birth." These words were struck out in the Revised Statutes, vol. xi. p. 158. The operation of the statute is, however, practically limited to European British subjects. Under section 4 (*u*) of the Code of Criminal Procedure 1882, "European British subject" means (1) any subject of Her Majesty born, naturalised, or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American, or Australian colonies or possessions of Her Majesty, or in the colony of New Zealand, or in the colony of the Cape of Good Hope or Natal; (2) any child or grandchild of any such person by legitimate descent.

Shall hereafter.—The Act came into operation on 7th August 1851.

Indicted for.—See notes to "any court," *inf.*

Charged with.—See notes to "any court," *inf.*

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Any court.—For the purposes of this section a magistrate inquiring into the state of mind of a prisoner under secs. 464-475 (3) of the Code of Criminal Procedure 1882, is a court.

Magistrate inquiring into state of mind of prisoner is a "court." *re Maltby.*

This point was decided in an interesting case under this section, which came before the Queen's Bench Division in 1881.[1] A European British subject having been arrested in India for homicide, a district magistrate was informed of it, and went with witnesses to a private house in the Presidency where the accused was detained. On seeing him and receiving medical testimony on oath as to his state of mind, the magistrate deemed him insane and unfit to be tried, and so reported to the Government of the Presidency. The Governor in Council made an order[2] under this section for the removal of the prisoner to England. By virtue of the order he was brought in custody to England, and on his arrival a royal warrant was issued, under sec. 2, *inf.*, for his reception into Broadmoor, where he was accordingly detained. Subsequently another royal warrant was issued for the removal of the lunatic into a private lunatic asylum at Moorcroft House, Hillington, there to remain during pleasure.

A rule was obtained calling upon the Home Secretary and the superintendent of Moorcroft House to show cause why a writ of *habeas corpus* should not issue for the lunatic's release from detention. Denman, J., and Pollock, B., discharged the rule. The case for the lunatic was put thus: Secs. 1 and 2 of this Act are to be read together. Sec. 2 provides that upon the arrival of any person removed to the United Kingdom under this Act, it shall be lawful for Her Majesty to make an order for his detention during pleasure, as if he had been indicted and found insane under 39 & 40 Geo. III. c. 94.

Arguments for lunatic.

But the procedure under 39 & 40 Geo. III. c. 94, sec. 2, was applicable only (1) when a *primâ facie* case was made out, (2) before a tribunal capable of convicting, (3) where insanity was tried and found by that tribunal. Sec. 1 of this Act is to be construed, *mutatis mutandis*, in the same sense. The lunatic must be either indicted for a matter for which he must be tried before a judge and jury, or charged with a crime or offence for which he could be tried by a magistrate, and the court finding him to be of unsound mind must be a court that has power to try him. Moreover, the lunatic must be "found to be of unsound mind," and these words imply an inquiry and finding by a court sitting for the purpose of trial, and not merely of investigating and deciding the question whether the accused should be committed for trial or not. It was argued that these conditions had not been complied with in this case. The lunatic had not been indicted, although the accusation against him was the crime of homicide, a point, it will be observed, involving the contention that the words "indicted for or charged with any crime or offence" were to be construed *reddendo singula singulis*; and even if another construction was tenable, he had not been "charged"

[1] *Re Maltby*, 1881, 7 Q.B.D. 18.

[2] The order is set out in the report in 7 Q.B.D., at p. 19.

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with any offence—since "charge" in Indian law means an act of accusation and not a "complaint" (the term used in the Code of Criminal Procedure 1877,[1] until a *primâ facie* case is made out, after which the "charge" is drawn up in writing),—there had been no finding that he was of unsound mind, and the magistrate holding the investigation was not competent to try his case.

Ratio decidendi.

Forcible as these arguments undoubtedly are, the decision of Denman, J., and Pollock, B., in this case appears to be right. The reference to 39 & 40 Geo. III. c. 94, sec. 2, in the second section of this Act is limited to the treatment of the removed lunatic upon his arrival in this country. The Acts of 1800 and 1851 were intended to meet different states of things. The object of the former (*v. ante* p. 792) was to remove doubts as to the custody of lunatics acquitted on the ground of insanity; the object of the latter was to provide for the removal of European prisoners, found by judicial authority to be of unsound mind, from "the hot climate" of India to "their native air." Again the language of the two statutes is different. The Act of 1800 provides only for the case of persons who are indicted, and who upon arraignment appear, or who upon their trial are found, to be insane. The present Act *ex concessis* includes the case of a person who is "charged" with an offence, and is afterwards acquitted, or *not tried*, on the ground of his being found to be insane. It is therefore not confined to indictment, and it says nothing about arraignment. These considerations leave us free to construe the first words in this section without reference to the Act of 1800, and the proper construction may fairly be held to be that the words "indicted for or charged with any crime or offence" are to be read as "indicted for any crime or offence or charged with any crime or offence," and not *reddendo singula singulis.* There remained the question whether he had been (*a*) *charged*, and (*b*) acquitted or not tried on the ground that he had been *found* to be of unsound mind.

(*a*) As regards the former point, the argument based on the distinction between "charge" and "complaint" in the Code of Criminal Procedure 1872[2] was of little importance, since it could not be shown that "charge" had any technical meaning in Indian law in 1851, and the decision of the Court for Crown Cases Reserved in *Reg.* v. *Hughes*[3] is a clear authority for the proposition that in this country in many cases the word "charge" in no way involves a written information, and that it is sufficient if a party is before the magistrate, and he is then charged with the commission of an offence within that magistrate's jurisdiction, unless the statute creating the offence imposes the necessity of taking some such step.[4]

(*b*) The prisoner, although not "acquitted," was clearly "not tried," on the ground that he had been "found to be of unsound mind." It is clear that these last words cannot be limited to a finding

[1] Now 1882, c. 1, Prelim. sec. 4 (*a*).
[2] Now 1882.
[3] 1879, 4 Q.B.D. 614; and cp. *Reg.* v. *D'Eyncourt*, 1888, 21 Q.B.D., at p. 117, and *Reg.* v. *Cork JJ.*, 1893, 32 L.R. Ireland, 557.
[4] *Reg.* v. *Shaw*, 1865, 34 L.J. M.C, per Erle, C.J., at p. 172.

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by a jury within the meaning of 39 & 40 Geo. III. c. 94, sec. 1, because whatever interpretation may be put upon "indicted for or charged with," they must apply to offences punishable by a magistrate alone, and the words "on the ground of his being found to be of unsound mind" are fairly and legitimately met by the case of a magistrate going to inquire into the question of whether he shall or shall not commit a man for murder, and then upon the view, and upon the opinion of skilled and respectable witnesses, "finding" in this sense that it appears to him, and on evidence on oath, that the man is of unsound mind, so that he cannot be sent for trial. "It is not hard," said Denman, J.,[1] "to suppose that the Legislature, when it passed this Act varying the words in 39 & 40 Geo. III. c. 94, intended to give a very much larger power in a remedial sense for the benefit of persons under such circumstances found unfit to be tried in India on account of their appearing to be of unsound mind in the opinion of the magistrate, and to give the Governor-General the humane and useful power of sending the person so charged and found to be of unsound mind to England, that he may have the best possible chance of recovery from his illness, and be kept in England during Her Majesty's pleasure. . . . Our attention has been called to the Code.[2] That seems to me to throw very little light on the matter, therefore we have rather to regard the state of things when this statute passed, and the powers given by it, than to see what are the powers of the Codes applicable to India. . . . My view of secs. 423-428" (now 464-475 B) "of the Code of Procedure is that they give a power perfectly consistent with the statute, and only go the length of enabling persons who are found lunatics, and perhaps only when so found by a tribunal competent to try them, to be kept in custody and brought up from time to time, when it may be suggested that they are fit to take their trial. All these sections are consistent with such power. When a person is lawfully in custody under these sections, the statute gives a further power if it be for the good of the person, and the Governor-General thinks it wise and right to send the person to England."

Acquitted.—The English verdict of "guilty, but insane" (see *post* p. 843), does not exist in India. See Code of Criminal Procedure 1882, sec. 470.

Not tried.—These words include "not committed for trial."[3]

"India."

India.—No definition of India is given in the Act. Probably that given in the Colonial Prisoners Removal Act 1884 (47 & 48 Vict. c. 31), sec. 18, *post*, would be followed, viz. "the expression 'India' means all territories and places within Her Majesty's dominions which are subject to the Governor-General of India in Council" (see *inf.* p. 854).

"Found to be of unsound mind."

Found to be of unsound mind, i.e. either at the time of the inquiry or at the time of the commission of the offence. The practical test

[1] 7 Q.B.D., at p. 26.

[2] Code of Criminal Procedure 1872, secs. 423-428, now Code of Criminal Procedure 1882, secs. 464-475 B.

[3] *Re Maltby, ante* p. 823.

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is in the former case whether the prisoner is capable of making his defence (see Code of Criminal Procedure 1882, sec. 464); and in the latter whether he was at the time of committing the act incapable by reason of unsoundness of mind of knowing its nature, or that it was wrong or contrary to law (*ib.*, sec. 469, and Penal Code, sec. 84). The decision of a magistrate that a prisoner is incapable of making his defence is a *finding* within the meaning of this section, although he may not have power to *try* the offence of which the prisoner is accused (*re Maltby*, *sup.* p. 823).

Indian law as to criminal responsibility in mental disease.

The Indian law as to criminal responsibility in mental disease is substantially the same as our own. The onus of establishing the plea rests with the prisoner, and it must be clearly discharged.[1] Moreover, the incapacity (stated in sec. 84 of the Penal Code) of knowing the nature of the act, or that it is wrong or contrary to law, and nothing else or less, must be proved.[2] Thus where A., a Hindu, sacrificed his child to Mahadeva because wealth did not accompany its birth, in the belief that the child would be restored to life and that wealth would simultaneously accrue to A., he was held to be guilty of murder. There may have been religious hallucinations in this case, but there was nothing to show the incapacity mentioned in sec. 84 of the Code.[3] But in such cases the High Court, adopting the principle of modified responsibility, may commute the sentence.[4]

"Lawfully in custody."

Lawfully in custody.—If the magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he is to postpone further proceedings in the case (Code of Criminal Procedure 1882, sec. 464), and report the case to the local government. Where the accused is before a Court of Session, or a High Court, the same procedure is to be followed, except that a formal judgment as to the incapacity of the accused is passed (Code, etc., sec. 465). The local government may then order the accused to be confined in a lunatic asylum or other suitable place of custody (*ib.* sec. 466). If these directions are complied with, the accused is "lawfully in custody," and the power of removal under the Act of 1851 may be exercised. Thereupon the authority of the magistrate or Court over the lunatic ceases, and does not revive unless and until he is taken back under sec. 473 of the Code of Criminal Procedure.[5]

The person or persons administering the Government.—In the Colonial Prisoners Removal Act 1884 the term "governor" includes such persons (sec. 18, *post*).

To order . . . United Kingdom.—The order and consequential directions are to be a sufficient authority for the removal (in conformity with the directions) and for the detention of the lunatic in custody here till his disposal is provided for (sec. 2, *post*). Where, however, the matter comes before the Court in England for adjudication upon *habeas corpus*, the Court will go back to the inception of the jurisdic-

[1] Cp. *Reg.* v. *Nobin Chunder Banerjee*, 1883, 13 Ben. Appx. 20, 21.
[2] *Reg.* v. *Bishendaree Kahar*, 1867, 7 Suth. Crim. 100-102.
[3] *E.g.* cp. *Queen-Empress* v. *Lakshman Dagdu*, 1886, L.R. 10 Bom. 512.
[4] Suth. Crim. 11.
[5] Cp. 2 Cal. 356.

tion,[1] and consider whether it existed and was lawfully exercised. The power given by this section is discretionary. Under Act X. of 1886, sec. 12 (Code of Criminal Procedure, sec. 475), the Governor-General in Council may order the removal of the lunatic to any place of safe custody in British India.

The order of Her Majesty.—The removal to a criminal lunatic asylum is effected by warrant under the sign manual issued by the Home Secretary.

Such directions.—The order and directions are to be a sufficient authority for the removal, etc. (sec. 2, *post*); but see note "to order . . . United Kingdom," *sup.*

Order of Government of India to be a sufficient warrant and authority for the purpose of removal.

2. That the orders and directions of the said Government of any of the said Presidencies for the removal of any person under the provisions of this Act shall be a sufficient warrant and authority to all commanders of vessels, and others, to whom the care and custody of any such person shall be committed, for the removal of such person from India to the United Kingdom in conformity with such directions, and for his detention in custody there until an order shall be made by Her Majesty as hereinafter is mentioned; and that upon the arrival of any such person in the United Kingdom it shall be lawful for Her Majesty to give such order for the safe custody of such person during her pleasure in such place and in such manner as to Her Majesty shall seem fit, in like manner as if such person had been indicted for an offence and found insane, and were thereby subject to the provisions of the Act passed in the thirty-ninth and fortieth year of His late Majesty King George the Third, intituled "An Act for the safe custody of insane persons charged with offences."

The orders and directions.—As to these see sec. 1, and notes thereon.

Removal must be effected in conformity with directions.

A sufficient warrant . . . directions.—But the removal must be effected in conformity with the directions. Sec. 330 of the Act of 1890, *ante*, is not available for the defence of persons acting under such directions, in the event of legal proceedings being taken against them, as it is limited to acts done in pursuance of the statute. But

[1] *Re Maltby*, 1881, 7 Q.B.D., at p. 28.

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Protection of persons acting under such directions.

the inherent jurisdiction of the Courts to stay proceedings might doubtless be invoked with success in such cases, and in any event a plea of "not guilty by statute" would be open to the defendant. While, however, this section would protect all ministerial officers acting in pursuance of the orders and directions above mentioned, when a case under this Act comes before the Court here for adjudication on *habeas corpus*, the Court must go back to the inception of the jurisdiction and consider whether it exists and has been lawfully exercised.[1]

Such order.—The order is given by warrant under the sign manual issued by the Home Secretary.

As if such person . . . offences.—See notes to sec. 2 of the Criminal Lunatics Act 1800 (39 & 40 Geo. III. c. 94), *ante*.

As to the relation of the Act of 1800 to procedure under the Act of 1851, see. notes to "any Court," in sec. 1, *ante* p. 823.

Expenses of removal to be defrayed by East India Company, and charged upon the revenues of India.

3. That all expenses attending the removal from India and the safe custody and maintenance in Great Britain or Ireland of all such persons as aforesaid shall be borne and defrayed by the East India Company, who are hereby authorised to charge the amount of such expenses upon the revenues of the Government of India.

Expenses of removal borne in first instance by Indian Government.

All expenses.—The Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64), sec. 10, *post*, giving effect to the ninth recommendation of the Departmental Commission of 1880 (*v. ante* p. 803), and a resolution in the Committee of the House of Commons of 4th July 1884,[2] provides for the payment of the expenses of the maintenance of criminal lunatics out of Parliamentary moneys. Subs. 4 of that section, however, expressly excepts lunatics removed under this Act from the operation of that provision. All expenses of removal, etc., under this Act are to be borne and defrayed in the first instance by the Government of India, constituting, however, a debt due to it by the lunatic (see sec. 4, *inf.*).

Debt against lunatic's estate.

Borne and defrayed, etc.—The Act for the Better Government of India (21 & 22 Vict. c. 106), sec. 42, provides that all sums of money, costs, charges, and expenses, which if it had not passed would after the time appointed for its commencement have been payable by the East India Company out of the revenues of India in respect of any liabilities then existing, and all expenses, debts, and liabilities which after its commencement shall be lawfully contracted and incurred on account of the Government of India, shall be charged and chargeable upon the revenues of India alone, as if the Act had not passed, and such expenses, debts, and liabilities had been lawfully contracted and

[1] *Re Maltby*, 1881, 7 Q.B.D., at p. 28.

[2] Hansard, 3rd ser. vol. 290, p. 75; 139 Commons' Journal, 339, 340, 344.

incurred by the Company. The expenses, although "borne and defrayed" by the Government of India in the first instance, constitute a debt due to it by the lunatic (sec. 4, *inf.*).

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The amount of all expenses incurred by the East India Company to be a debt due from the lunatic, and be secured by a judgment in England and Ireland, and by decree of registration in Scotland.

4. That the amount of all expenses incurred by the East India Company in respect of the removal and custody of any such person as aforesaid shall be a debt from such person to the East India Company; and that for securing the payment thereof the East India Company shall be entitled to enter up against such person as of the date of the order for removal from India any judgment in England or Ireland in an amount sufficient to secure the payment of all expenses incurred and to be incurred in respect of the matters aforesaid, and the costs of ascertaining the same as after mentioned; and on production at the office in Edinburgh for the registration of writs in the Books of Council and Session of a copy of any order of the Court of Directors directing such judgment to be entered up, certified by the Secretary of the said Company, such order shall be registered in the said books in like manner as a bond executed according to the law of Scotland with a clause of registration, and decree shall be interponed thereon which shall have the like effect as if such person had executed such bond, but without prejudice to the provisions herein contained for ascertaining the sum actually due; and that upon application to be from time to time made to the Lord Chancellor of Great Britain in England or Chancellor in Ireland, being entrusted with the care of persons of unsound mind, or the Court of Session in Scotland, the amount of such expenses reasonably and properly incurred shall be ascertained by a reference to one of the Masters of the Court of Chancery, or by a remit to the Accountant of the Court of Session, or otherwise, in such manner as the person or persons to whom such application shall be made shall direct; and the East India

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Company shall be entitled from time to time to recover payment of the amount so ascertained, and the cost of ascertaining the same, by proceeding on the judgment in England or Ireland, and registered order and decree in Scotland, and enforcing the same against the property but not against the person of the debtor, in the same manner as if such judgment had at the date of the said order of removal been recovered against the debtor when of sound mind, and had been entered up at the date of such order, or as if such bond had been granted by the debtor when of sound mind at the date of such order, and had been duly registered in the Books of Council and Session, and a decree of the Court of Session interponed thereto.

Maintenance implied here.

The removal and custody.—In sec. 3, *sup.*, "removal, custody, and maintenance" are mentioned. But it is clear both from the provision in sec. 3, and from the procedure indicated in this section, that maintenance is to be implied here.

Lunatics and idiots may be removed from India by orders of the Supreme Courts at the several Presidencies.

5. That in all cases where a guardian, keeper, or curator of the person and estate of any idiot, lunatic, or person of unsound mind shall have been or shall be appointed by the Supreme Court of Judicature at any of the Presidencies of India, it shall be lawful for such Supreme Court to declare that such person ought to be removed from India to any part of the United Kingdom, and thereupon to make such further or other order or orders authorising or directing his removal, and touching his safe custody and maintenance, as to such Supreme Court shall seem fit and proper: Provided always, that in every such case a transcript of the proceedings in the matter of the idiotcy or lunacy of such person shall, under the provisions hereinafter contained, be transmitted to that part of the United Kingdom to which such person shall be removed.

6. That in all cases where a guardian, keeper, or curator

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Transcript of all inquisitions and orders to be transmitted and entered of record, and to be acted upon in the United Kingdom as if the inquisitions had been taken in the United Kingdom.

of the person and estate of any idiot, lunatic, or person of unsound mind shall have been or shall be appointed by any of the Supreme Courts in India as aforesaid, it shall be lawful for the proper officer of the said Supreme Court by the order of such Court to transmit a transcript, under the hand and seal of the Chief Justice or Senior Judge of such Supreme Court, of the proceedings by which the idiotcy, lunacy, or unsoundness of mind shall have been found, and by which such guardian, keeper, or curator shall have been appointed, to the Chancery in England and the Court of Session in Scotland and the Chancery of Ireland respectively, as the case may require, and that such transcript, when so received, shall be entered as of record in the Court or Courts to which the same shall be transmitted; and that in the case of any supersedeas of any such proceedings the same shall be certified and transmitted and recorded in like manner; and that the record of any such proceedings or of any such supersedeas as aforesaid shall, in case and so long and so far as the Lord Chancellor of Great Britain or other persons entrusted as aforesaid, or the Court of Session in Scotland, or the Chancellor of Ireland entrusted as aforesaid (as the case may require), shall respectively see fit, be acted upon by him and them respectively, and be of the same force and validity, and have the same force and effect, as if such proceedings or supersedeas, or proceedings or a supersedeas to the like effect, had taken place in England, Scotland, or Ireland respectively; and it shall be lawful for the Lord Chancellor or other persons entrusted as aforesaid, the Court of Session in Scotland, and the Chancellor of Ireland entrusted as aforesaid respectively, from time to time to make and give all such orders or directions by appointing any committee or committees, curator or curators, or otherwise, as may appear necessary or proper for securing proper care and protection

Sec. 7.

to the person and estate of such idiot, lunatic, or person of unsound mind.

Appointing any committee.—See *ante* pp. 341 and 347, as to appointment of committees.

Powers given to the Lord Chancellor to extend to Lord Keeper and Commissioners of the Great Seal.

7. That the powers and authorities given by this Act to the Lord Chancellor of Great Britain or other persons entrusted as aforesaid shall and may be exercised in like manner by and are hereby given to the Lord Keeper or Commissioners of the Great Seal of Great Britain, or any other person or persons for the time being entrusted as aforesaid, and the powers and authorities given by this Act to the Lord Chancellor of Ireland entrusted as aforesaid shall and may be exercised in like manner by and are hereby given to the Lord Keeper or Commissioners of the Great Seal of Ireland, or any other person or persons for the time being entrusted as aforesaid.

Other persons entrusted.—See notes to sec. 108, subs. (1) of the Lunacy Act 1890, *ante*.

D

THE CRIMINAL LUNATIC ASYLUMS ACT 1860

(23 & 24 Vict. c. 75).

An Act to make better provision for the custody and care of criminal lunatics. [6th August 1860.]

39 & 40 Geo. III. c. 94.

3 & 4 Vict. c. 54.

Whereas by the Act of the Session holden in the thirty-ninth and fortieth years of King George the Third, chapter ninety-four, and the Act of the Session holden in the third and fourth years of Her Majesty, chapter fifty-four, Her Majesty is empowered, where any person is charged with any such offence as therein mentioned,

and acquitted on account of insanity, and where any person is indicted for any offence and upon an arraignment is found insane, to give order for the safe custody of such person during her pleasure in such place and in such manner as she may think fit; and by the said Act of the third and fourth years of Her Majesty one of Her Majesty's principal Secretaries of State is empowered, upon such certificate as therein mentioned of the insanity of any person imprisoned as therein mentioned, to direct such person to be removed to such county lunatic asylum, or other proper receptacle for insane persons, as the said Secretary of State may judge proper and appoint: And whereas by the Acts of the Session holden in the fifth and sixth years of Her Majesty, chapter twenty-nine, and of the Session holden in the sixth and seventh years of Her Majesty, chapter twenty-six, the said Secretary of State is empowered to order any convict in Pentonville or Millbank Prison becoming or found insane during confinement to be removed to said lunatic asylum as the said Secretary of State may think proper: And whereas it is expedient that provision should be made for the custody and care of criminal lunatics in an asylum or asylums appropriated to that purpose: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

5 & 6 Vict. c. 29. 6 & 7 Vict. c. 26.

Preamble.

This preamble is repealed by the Statute Law Revision Act 1892 (55 & 56 Vict. c. 19).

Short title.

The Criminal Lunatic Asylums Act 1860.—This short title is enacted by the Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64), sec. 1, and Sched. i., *post.*

As to the history of criminal lunatic asylums in this country, see *ante* p. 795.

Sec. 1.

Scope of Acts of 1800 and 1840.

39 & 40 Geo. III. c. 94, and 3 & 4 Vict. c. 4.—Sec. 1 of the former Act (the Criminal Lunatics Act 1800), *ante*, and sec. 3 of the latter (the Criminal Lunatics Act 1840), *ante*, enabled Her Majesty to give order for the safe custody of a person charged with an offence and acquitted on the ground of insanity. Both sections are now superseded by sec. 2 of the Trial of Lunatics Act 1883 (46 & 47 Vict. c. 38), *post*.

5 & 6 Vict. c. 29. 6 & 7 Vict. c. 26.

5 & 6 Vict. c. 29 . . . 6 & 7 Vict. c. 26.—Under the 23rd and 21st sections of these statutes the governors of Pentonville and Millbank Prisons might respectively report convicts to the Secretary of State for removal to asylums. The former section is repealed by the Statute Law Revision Act 1874 (No. 2) (37 & 38 Vict. c. 96), the latter by the Criminal Lunatics Act 1884, *post*.

Whereas it is expedient, etc.—The inconveniences of the old provisions for the custody of criminal lunatics are noted above, *ante* p. 795.

Her Majesty may appoint asylum for criminal lunatics.

1. It shall be lawful for Her Majesty from time to time, by warrant under her royal sign manual, to appoint that any asylum or place in England which Her Majesty may have caused to be provided or appropriated, and may deem suitable for this purpose, shall be an asylum for criminal lunatics, and the provisions of this Act shall be applicable to every such asylum.

Broadmoor only asylum under Act.

Any asylum.—Broadmoor in Berkshire is the only criminal lunatic asylum that has yet been opened under this Act (see *ante* p. 798).

Secretary of State may direct criminal lunatics to be confined in the asylum.

2. It shall be lawful for one of Her Majesty's principal Secretaries of State, by warrant under his hand, to direct to be conveyed to and kept in any such asylum any person for whose safe custody during her pleasure Her Majesty is authorised to give order, or whom such Secretary of State might direct to be removed to a lunatic asylum under any *of the Acts hereinbefore mentioned, or under any other* Act of Parliament, or any person sentenced or ordered to be kept in penal servitude, who may be shown to the satisfaction of the Secretary of State to be insane, *or to be unfit from imbecility of mind for penal discipline;* and the Secretary of State may direct to be removed to and kept in such asylum any such persons as aforesaid, who,

under any previous order of Her Majesty or warrant of the Secretary of State, may have been placed and remain in any county lunatic asylum, or other place of reception for lunatics; and every person directed by the Secretary of State to be conveyed or removed to and kept in an asylum under this Act shall be conveyed to such asylum accordingly, and shall be kept therein until lawfully removed or discharged, and that with every person so conveyed or removed there shall be transmitted a certificate, as set forth in Schedule A. to this Act annexed, duly filled up and authenticated, the contents of which certificate shall be transcribed into the general register to be kept in every such asylum.

One of Her Majesty's principal Secretaries of State.—In practice the Home Secretary only.

Of the Acts . . . other. — These words were repealed by the Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64), sec. 17, and Sched. ii., *post.*

Any other Act of Parliament.—*E.g.* the Lunatics Removal (India) Act 1851, sec. 2, *ante.*

Or to be unfit . . . discipline.—Repealed by sec. 17 and Sched. ii. of the Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64). As to the treatment of imbeciles, see sec. 12 of the Criminal Lunatics Act 1884 and notes thereon, *post.*

As to remitting criminals from prison to a criminal lunatic asylum, see sec. 2 of the Criminal Lunatics Act 1884, *post.*

As to remitting criminal lunatics from criminal lunatic asylums to prison, see sec. 3 of the Criminal Lunatics Act 1884, *post.*

County lunatic asylum . . . lunatics.—See definition of "county" and "asylum" in sec. 341 of the Act of 1890, *ante.* As to the places where criminal lunatics were detained before the opening of Broadmoor, see *ante* p. 795.

Lawfully removed or discharged.—As to removal of criminal lunatics to prison, and transfer or discharge, absolute or conditional, see secs. 3 and 5 of the Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64), *post.*

Transmitted, i.e. to the medical superintendent of the asylum (see Statement in Schedule, *post*).

A certificate.—The certificate given in Schedule A. is only a statement of particulars (see *post*).

3. Nothing in this Act shall restrain or affect the authority of Her Majesty, where she may so think fit, to

Sec. 4.

Nothing to affect the authority of the Crown to make other provision for the custody of a criminal lunatic.

give such other order for the safe custody of any such person as aforesaid as she might have given if this Act had not been passed, or restrain or affect the authority of the Secretary of State to continue in or direct to be removed to any county asylum or other place for the reception of lunatics any of the persons aforesaid whom he might have so continued or directed to be removed if this Act had not been passed.

Criminal lunatics are still, in trifling cases, sent to county lunatic asylums.

Secretary of State to appoint council of supervision and officers for asylums.

4. It shall be lawful for the Secretary of State from time to time to appoint any such persons as he may think fit, being not less than three in number, to be a council of supervision for any asylum under this Act, and to remove all or any of the said council, and upon the removal, death, or resignation of any member of the said council, to appoint another in his place; and also from time to time to appoint for the asylum a resident medical superintendent, a chaplain, and such other officers, assistants, and servants, as he may deem necessary, and at pleasure to remove such superintendent, chaplain, officers, assistants, and servants respectively; and the Secretary of State, with the approval of the *Commissioners of Her Majesty's* Treasury, shall fix the salaries to be paid to the superintendent, chaplain, officers, assistants, and servants of such asylum.

The Secretary of State.—In practice the Home Secretary only.

Commissioners of Her Majesty's.—These words were rendered unnecessary by the definition of Treasury in the Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 12, subs. (2), cited *ante* p. 190, and were accordingly repealed by the Statute Law Revision Act 1892 (55 & 56 Vict. c. 19).

As to visitation and reports of Commissioners in Lunacy, see secs. 14 and 15, *post*.

Salaries.—The officials of Broadmoor Asylum are within the Superannuation Act 1859 (22 Vict. c. 26) and amending Acts, "and by a minute of the Lords of the Treasury further provision is made

for the cases of those who may sustain injury or loss of life in the execution of their duty."[1]

Secretary of State to make rules for the government of the asylum.

5. It shall be lawful for the Secretary of State from time to time to make rules for the government and management of the asylum, and for the duties and conduct of the officers thereof, and for the care and treatment of the persons confined therein, and to subscribe a certificate that they are fit to be enforced, and such rules, when so certified, shall be binding on the council, and all officers, assistants, and servants of the asylum, and all other persons whomsoever, and all such rules shall be laid before Parliament within twenty-one days after they shall be certified, or if Parliament be not sitting then within twenty-one days after the next meeting of Parliament.

Rules.—Such rules were duly made for Broadmoor Asylum and laid before Parliament under this section, and were ordered by the House of Commons to be printed on 27th July 1863 (Session Papers, No. 517).

Within twenty-one days.—As to publication of such rules now, see the Rules Publication Act 1893 (56 & 57 Vict. c. 66).

Subject to such rules, council to superintend asylum.

6. Subject to the rules certified by the Secretary of State under this Act, the council of supervision shall superintend and direct the management and conduct of the asylum, and the care and treatment of the lunatics confined therein; and such council or any two of them shall from time to time, as by the rules shall be provided, and at such other times as they may think fit, report in writing to the Secretary of State in relation to the management and conduct of the said asylum and the condition thereof, and to any matters concerning the same; and if any person detained and confined as aforesaid shall be of a religious persuasion differing from that of the Established Church, a minister of such persuasion at the special request

[1] 29th Report of Commissioners in Lunacy, Appx. G, p. 273, note.

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of such person or of his friends or relations shall be allowed to visit him at proper and reasonable times, by application to the medical superintendent, and under such rules as may be approved of by the Secretary of State, but no such person shall be compelled to attend any of the ordinances or instructions of any religious persuasion other than his own.

Report.—As to reports by Commissioners in Lunacy, see sec. 15, *post.*

As to reports by medical superintendent, see sec. 4, subs. (1) of the Criminal Lunatics Act 1884, *post.*

Provision as to removal and discharge of lunatics.

7. *The provisions of the Acts hereinbefore mentioned, or of any other Act for the removal or discharge of lunatics whom the said Secretary of State is, under the hereinbefore mentioned Acts or any other Act now in force, authorised to direct to be removed to any lunatic asylum, shall extend and apply to any lunatic whom the Secretary of State may direct to be conveyed to any asylum for criminal lunatics appointed under this Act: Provided always, that any order for removal or discharge which may now be made by the Secretary of State on the certificate of two physicians or surgeons, may be made on the certificate of the resident medical superintendent of the asylum and any two of the council of supervision.*

Repealed by sec. 17 and Sched. ii. of the Criminal Lunatics Act 1884, *post.*

Provision for discharge of persons confined after their term of imprisonment has expired.

8. Provided also, that where by reason of the expiration of his term of imprisonment or penal servitude, or otherwise, a person confined in the asylum would be entitled to his discharge if duly certified to have become of sound mind, it shall be lawful for the Secretary of State by his warrant to order the discharge of such person, although he may not have been certified as aforesaid, to the intent

that he may be placed in a county lunatic asylum, or otherwise subjected to the same care and treatment as lunatics not being criminals.

This section is still in force. It was repealed by the Criminal Lunatics Act 1867 (30 & 31 Vict. c. 12), sec. 6. But that Act was itself repealed by sec. 17 and Sched. ii. of the Criminal Lunatics Act 1884, which do not repeal the present section (*post*).

Secretary of State may permit any lunatic to be absent from asylum on trial, etc.

9. *Provided also, that it shall be lawful for the Secretary of State by his warrant to permit any person confined in the asylum to be absent from such asylum upon trial for such period as he may think fit, or to permit any such person to be absent from such asylum upon such conditions in all respects as to the Secretary of State shall seem fit, and in case any person so permitted to be absent upon trial for any period do not return at the expiration of such period, or in case any of the conditions on which any person is so permitted to be absent be broken, the person not returning at such expiration or absent after any such condition has been broken, as the case may be, may be retaken as herein provided in the case of an escape.*

This section was applied by sec. 4 of the Criminal Lunatics Act 1867 (30 & 31 Vict. c. 12) to any criminal lunatic in whatever asylum or place of confinement he might be. But that Act is repealed by sec. 17 and Sched. ii. of the Criminal Lunatics Act 1884, which also repeal this section (*post*).

Provisions of 3 & 4 Vict. c. 54, as to expenses of conveyance and maintenance, to apply to this Act.

10. All provisions in the said Act of the third and fourth years of Her Majesty for the payment of the conveyance of such insane persons as therein mentioned to any asylum or other receptacle, and of his maintenance therein, shall extend and be applicable to the conveyance of any such person to any asylum for criminal lunatics, and his maintenance therein, and all sums payable under any order made under such provisions shall be paid and applied towards defraying or reimbursing the expenses

Sec. 11.

in respect of which the same are paid, or other expenses of the asylum, as the *Commissioners of Her Majesty's* Treasury may direct.

See notes to preceding section, and—as to "Commissioners of Her Majesty's"—to sec. 4, *ante*.

Lunatics escaping may be retaken by superintendent, etc.

11. In case of escape of any person confined in any asylum for criminal lunatics, he may be retaken at any time by the superintendent of such asylum, or any officer or servant belonging thereto, or any person assisting such superintendent, officer, or servant in this behalf, or any other person authorised in writing in this behalf by the Secretary of State or such superintendent, and conveyed to and received and detained in such asylum.

See sec. 11, subs. (1) of the Criminal Lunatics Act 1884, *post*.

Punishment of persons for rescue or permitting escape.

12. Any person who rescues any person ordered to be conveyed to any asylum for criminal lunatics during the time of his conveyance thereto, or of his confinement therein, and any officer or servant in any asylum for criminal lunatics, who through wilful neglect or connivance permits any person confined therein to escape therefrom, or secretes, or abets, or connives at the escape of any such person, shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for any term not exceeding four years, or to be imprisoned for any term not exceeding two years, with or without hard labour, at the discretion of the Court, and any such officer or servant who carelessly allows any such person to escape as aforesaid, shall on summary conviction before two justices of such offence, forfeit any sum not exceeding twenty pounds nor less than two pounds.

See note to preceding section.

Nor less than.—The fine may be still further reduced in spite of this provision. See sec. 4 of the Summary Jurisdiction Act 1879 (42 & 43 Vict. c. 49).

Sec. 13.

Penalty on officers or servants ill-treating lunatics.

13. Any superintendent, officer, nurse, attendant, servant, or other person employed in any asylum for criminal lunatics who strikes, wounds, ill-treats, or wilfully neglects any person confined therein, shall be guilty of a misdemeanour, and shall be subject to indictment for every such offence, and on conviction under the indictment to fine or imprisonment, with or without hard labour, or to both fine and imprisonment, at the discretion of the Court, or to forfeit for every such offence, on a summary conviction thereof before two justices, any sum not exceeding twenty pounds nor less than two pounds.

See notes to sec. 322 and 324 of the Lunacy Act 1890, *ante*.

Commissioners in Lunacy to visit asylums; and

14. Two or more of the Commissioners in Lunacy, one at least of whom shall be a physician or surgeon, and one at least a barrister, shall, once or oftener in each year, on such day or days and at such hours of the day and for such length of time as they think fit, and also at any time when directed by the Secretary of State, visit every asylum for criminal lunatics, and shall inquire as to the condition, as well mental as bodily, of the persons confined therein, or any of them, and shall also make such other inquiries as to such asylum as to them may seem proper, or as such Secretary of State may direct.

As to obstructing the Commissioners in the exercise of their powers under this Act, see sec. 321, subs. (1) of the Act of 1890, *ante*.

The Lord Chancellor in the case of a lunatic so found, and the Lord Chancellor or Home Secretary in any other case, may order special visitations (Act of 1890, sec. 205, *ante*).

report to Secretary of State.

15. The Commissioners in Lunacy shall in the month of March in every year report to one of Her Majesty's principal Secretaries of State the visits made as aforesaid in the preceding year, and all such particulars in relation to every asylum visited as aforesaid as they think deserving

Sec. 15.

of notice, and shall also report in like manner in relation to any visit made by the direction of the Secretary of State as soon as conveniently may be after such visit, and a copy of every such report shall be laid before Parliament within twenty-one days after the receipt thereof, or if Parliament be not sitting then within twenty-one days after the next meeting of Parliament.

As to reports by medical superintendent, see sec. 4, subs. (1) of the Criminal Lunatics Act 1884, *post*.

As to reports by council of supervision, see sec. 6 of this Act, *sup*.

SCHEDULE A.

STATEMENT respecting CRIMINAL LUNATICS to be filled up and transmitted to the MEDICAL SUPERINTENDENT with every CRIMINAL LUNATIC.

Name.
Age.
Date of admission.
Former occupation.
From whence brought.
Married, single, or widowed.
How many children.
Age of youngest.
Whether first attack.
When previous attacks occurred.
Duration of existing attack.
State of bodily health.
Whether suicidal or dangerous to others.
Supposed cause.
Chief delusions or indications of insanity.
Whether subject to epilepsy.
Whether of temperate habits.
Degree of education.
Religious persuasion.
Crime.
When and where tried.
Verdict of jury.
Sentence.

Whether first attack.—As to construction of such particulars, see *Lowe* v. *Fox*, 1887, 12 App. Cas. 206, and *ante* p. 91.

E

TRIAL OF LUNATICS ACT 1883

(46 & 47 Vict. c. 38).

An Act to amend the law respecting the trial and custody of insane persons charged with offences.

[25th August 1883].

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Trial of Lunatics Act 1883.

Sec. 1.

Short title.

Trial of Lunatics Act 1883.—The principal changes introduced by this Act are (1) that the jury are required to find specifically whether the prisoner did or did not commit the offence imputed to him,[1] instead of, as before, merely that he was insane at the time of its commission; and (2) that whereas under the Act of 1800[2] a prisoner found to be insane at the time of the commission of an offence was *acquitted* on the ground of insanity, the verdict now is in such a case that he was guilty, but insane at the time in question.[3] The special verdict introduced by this Act is open to the objection that it declares a man to be at once *guilty* of an offence and not responsible for it. But the intention of the Legislature was to risk this anomaly in the hope that the formal conviction contained in the new verdict might have a deterrent effect on the partially insane;[4] and, moreover, the whole law as to criminal lunatics proceeds on the assumption that a man may be a criminal and a lunatic at the same time.[5]

Changes introduced by Act.

(1) Jury to find specifically commission of offence.

(2) Guilty but insane.

Objection to special verdict considered.

2. (1) Where in any indictment or information any act or omission is charged against any person as an offence,

Special verdict where accused found guilty, but insane at date of act or omission charged, and orders thereupon.

[1] And note that they must find that he did all that is in law necessary to constitute the offence (*Reg.* v. *Oxford*, 1840, 9 C. & P. 525). The facts in this case are stated *ante* p. 805.

[2] See *ante* p. 792.

[3] See sec. 2, subs. (1), *inf.*

[4] Cp. the speeches on the introduction of the Bill by Lord Selborne in the House of Lords, Hansard, 3rd series, vol. 282, p. 1302, and Sir Henry James in the House of Commons, *ib.* vol. 283, p. 922.

[5] See particularly the Criminal Lunatics Act, 1884, *post*, which empowers the Secretary of State to attach conditions to the discharge of a criminal lunatic (sec. 5, subs. (2)), and to revoke his discharge if the conditions are broken (*ib.* subs. (3)).

Sec. 2 (1).

and it is given in evidence on the trial of such person for that offence that he was insane, so as not to be responsible, according to law, for his actions at the time when the act was done or omission made, then, if it appears to the jury before whom such person is tried that he did the act or made the omission charged, but was insane as aforesaid at the time when he did or made the same, the jury shall return a special verdict to the effect that the accused was guilty of the act or omission charged against him, but was insane as aforesaid at the time when he did the act or made the omission.

Act of 1800 applied to treason, murder, and felony only.

Act of 1840 applied to all offences.

This subsection repeals (*v.* Schedule, *post*) the first enacting clause of sec. 1 of the Act of 1800 (39 & 40 Geo. III. c. 94, *ante*), and the first enacting clause of sec. 3 of the Criminal Lunatics Act 1840 (3 & 4 Vict. c. 54). Sec. 1 of the Act of 1800 provided that the jury in case of any person charged with "treason, murder, or felony," being proved to have been insane at the time of the commission of the offence should declare whether he was acquitted by them on the ground of insanity, and that in that event the Court should order him to be kept in custody during pleasure. Sec. 3 of the Act of 1840 extended this provision to all offences. The present subsection is equally wide. But the trial must be on information or indictment and before a jury.

As to points in which this Act modifies the law, see note to sec. 1, *sup.*

Insane so as not to be responsible.—As to criminal responsibility in relation to insanity, see *post* p. 885.

At the time when, etc.—Insanity upon arraignment is not dealt with in this subsection. The law relating to it is contained in sec. 2 of the Act of 1800 (39 & 40 Geo. III. c. 94), *ante*, *q.v.*, with notes thereon.

Grand jury no right to ignore bill.

The jury.—The grand jury have no right to ignore a bill on the ground of insanity. If they are of opinion that the acts done were such as if done by a person of sound mind would have amounted to the offence charged, it is their duty to find a true bill.[1]

Insane as aforesaid.—That is, "so as not to be responsible according to law" (*v.* note, *sup.*).

Special verdict.

A special verdict . . . omission.—There was a special verdict under sec. 1 of the Act of 1800, *ante*; also the jury were required to find specially whether the prisoner was insane at the time of the commission of the offence, and to declare whether they acquitted him on the ground of insanity. Now the jury must find specifically that the

[1] *Reg.* v. *Hodges*, 1838, 8 C. & P. 195.

prisoner was guilty of the act or omission [1] charged against him, but was insane at the time in question. See note to sec. 1, *sup.* Sec. 2 (2), (3).

(2) Where such special verdict is found, the Court shall order the accused to be kept in custody as a criminal lunatic, in such place and in such manner as the Court shall direct till Her Majesty's pleasure shall be known; and it shall be lawful for Her Majesty thereupon, and from time to time, to give such order for the safe custody of the said person during pleasure, in such place and in such manner as to Her Majesty may seem fit.

This subsection repeals the second and third enacting clauses of (*a*) sec. 1 of the Criminal Lunatics Act 1800 (39 & 40 Geo. III. c. 94), *sup.*, and (*b*) sec. 30 of the Criminal Lunatics Act 1840 (3 & 4 Vict. c. 54).

Such special verdict.—See subs. (1), *sup.*, and notes thereon.

The Court, i.e. any Court trying a prisoner for any offence on indictment or information with a jury (see subs. 1, *sup.*). "The Court."

Criminal lunatic.—For summary of the law as to criminal lunatics, see *ante* p. 792.

Thereupon, i.e. upon the order of the Court.

Such order . . . fit.—The order for the removal to a criminal lunatic asylum is by warrant under the sign manual. Order by warrant under sign manual.

(3) *In all such cases any two justices of the peace of the county, city, or place where such person shall have been tried, or shall be kept in custody, shall have the like power as is given by the Act of the third and fourth years of Her present Majesty, chapter fifty-four, in the cases therein mentioned, to inquire into and ascertain the last legal settlement of such person, and also to make the like order or orders for the payment of such person's maintenance and other charges as therein mentioned.*

This subsection is repealed by sec. 17 and Sched. ii. of the Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64), *post, q.v.*; and as to the expenses of maintenance of a person found guilty but insane at

[1] The jury must be satisfied that the prisoner has done all that is legally necessary to constitute the offence (*Reg.* v. *Oxford*, 1840, 9 C. & P. 525). The facts in this case are stated *ante* p. 805.

Sec. 2 (4).

the time of the commission of an offence, see sec. 10 of that statute, *post*.

The Act of the third, etc.—Under the statute 3 & 4 Vict. c. 54, sec. 2, taken in conjunction with sec. 2 of the Prison Act 1865 (28 & 29 Vict. c. 54), the only justices who could inquire into the last legal settlement were the visiting justices of the prison where there were such, and where there were none, the justices of the county, city, borough, or place where the prison was situated.[1]

Last legal settlement.—These words were construed as legal settlement at the date of the inquiry.[2]

(4) All provisions in any existing Act or in any rules or orders made in pursuance of any existing Act, having reference to a person or persons acquitted on the ground of insanity, shall apply to a person or persons in respect of whom a special verdict is found under this Act.

Provisions applicable to persons as to whom special verdict found.

Provisions.—The provisions referred to were sec. 7 of the Criminal Lunatics Act 1840 (3 & 4 Vict. c. 54), repealed by sec. 17 and Sched. ii. of the Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64); sec. 15 of the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86), repealed by sec. 342 and Sched. v. of the Lunacy Act 1890 (*ante*); and the Broadmoor Rules of 1863,[3] made under sec. 5 of the Criminal Lunatic Asylums Act 1860 (23 & 24 Vict. c. 75), *sup.*

Extent of Act.

3. (1) This Act shall extend to Ireland with the following modifications, that is to say, the words "the Lord-Lieutenant" shall be substituted for "Her Majesty," and the words "the pleasure of the Lord-Lieutenant" for "Her Majesty's pleasure."

Lord-Lieutenant.

The Lord-Lieutenant.—The term "Lord-Lieutenant" means the Lord-Lieutenant of Ireland or other chief governors or governor of Ireland for the time being.[4]

(2) This Act shall not extend to Scotland.

Repeal.

4. (1) The enactments mentioned in the Schedule to this Act are hereby repealed to the extent mentioned in the third column thereof, but this repeal shall not affect any order made or thing done in pursuance of any enact-

[1] *Reg.* v. *Lewes Gaol*, 1875, 39 J.P. 612.
[2] *Barton Regis* v. *Berkshire*, 1878, 43 J.P. 190.
[3] Session Paper, 1863, No. 517.
[4] Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 12, subs. (9).

ment so repealed; and any such order may be carried into effect, revoked, or varied, as if made under this Act. Sec. 4 (2).

Repealed.—See provisions of Interpretation Act 1889 (52 & 53 Vict. c. 63),[1] relating to repeals, set out *ante* p 720.

(2) Any unrepealed enactment referring to any enactment hereby repealed shall be construed to apply to the corresponding provisions of this Act.

SCHEDULE.

Enactments Repealed.

Session and Chapter.	Title.	Extent of Repeal.
39 & 40 Geo. III. c. 94.[2]	An Act for the safe custody of insane persons charged with offences.	Section one.
1 & 2 Geo. IV. c. 33.[3]	An Act to make more effectual provision for the establishment of asylums for the lunatic poor, and for the custody of insane persons charged with offences in Ireland.	Section sixteen.
3 & 4 Vict. c. 54.[4]	An Act for making further provision for the confinement and maintenance of insane prisoners.	Section three.

[1] Sec. 12, subs. (9). [2] See *ante* p. 793. [3] See *ante* p. 83. [4] See *ante* p. 797.

F

THE COLONIAL PRISONERS REMOVAL ACT 1884

(47 & 48 Vict. c. 3).

An Act to make further provision respecting the removal of prisoners and criminal lunatics from Her Majesty's possessions out of the United Kingdom.

[28th July 1884.]

Whereas it is expedient to provide for the removal of prisoners undergoing sentence, and of criminal lunatics from one British possession to another British possession, or to the United Kingdom:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Object of Act.

Whereas it is expedient.—The object of the Act is to authorise the removal from any British possession (including India) to the United Kingdom or to any other consenting British possession, for the purpose of undergoing the remainder of their sentences, prisoners who have been tried under the authority of Imperial Acts, or who at the time of committing the offences of which they are convicted, are subject to the Army Act or the Navy Discipline Acts, and prisoners not coming under either of the foregoing categories whose health would be permanently injured by imprisonment in the possession where they are undergoing sentence, or whom it is expedient to remove for safer custody or for more efficiently carrying out the sentence. The Act also authorises the removal of criminal lunatics from any possession to the United Kingdom or to another possession.

Although it is unlikely that the occasions for the exercise of the powers proposed to be created by the Act will frequently arise, cases have occurred from time to time in which the existence of such powers would have prevented great hardship and even cruelty to Europeans sentenced to long terms of imprisonment in tropical climates.

Sec. 10 (1).

Previous to its enactment there was a case of an English prisoner whose health was seriously affected by a long imprisonment in Malta; and a case has occurred in St. Helena, one in the Falkland Islands, and another in Heligoland, in which, from the absence of proper prisons, the advisability of taking powers for an offender's removal, with a view to the more efficient carrying into effect of the sentence, became very apparent.

The Bill (without the provisions relating to criminal lunatics) was sent in circular to the Colonial Governments, and was either approved or not objected to by the great majority of them.

The provisions as to criminal lunatics (sec. 10) were inserted in consequence of a case in Bermuda, which showed the inconvenience of retaining such persons in some of the smaller colonies, in which it is impracticable to make proper provision for their custody.[1]

Criminal Lunatics.

Application of Act to removal of criminal lunatics.

10. (1) The provisions of this Act shall apply to a person in custody as a criminal lunatic in like manner, so far as consistent with the tenor thereof, as they apply to a prisoner undergoing sentence of imprisonment; and separate regulations may be made by Her Majesty in Council under this Act in relation to criminal lunatics and (subject to those regulations) all laws and regulations in force in the part of Her Majesty's dominions in which a criminal lunatic removed or returned is for the time being in custody under a warrant issued in pursuance of this Act, shall apply to such criminal lunatic as if he had become a criminal lunatic in that part.

The provisions of this Act.—It has not been thought necessary to insert the whole Act in this work. The following is a summary of its material provisions: Where it appears to a Secretary of State (in practice the Secretary of State for the Colonies) acting in concurrence [2]

[1] See memorandum prefixed to Bill.

[2] The concurrence of the Government of a British possession, and any requisition by the Government of a British possession, may be given or made by the Governor in Council or such other authority as may be from time to time provided by the law of that possession, but shall be signified by writing under the hand of the Governor or of the Colonial Secretary or of any other officer appointed in this behalf by the law of that possession (sec. 6, subs. (1)).

Any writing purporting to give such concurrence or make such requisition, and to be signed as above mentioned, shall be conclusive evidence that the concurrence of or requisition by the Government of the British possession has been duly given or made according to law; and any writing purporting to be under the hand of a Secretary of State, and to order the removal of a prisoner from a British possession, shall

Sec. 10 (1).

with the Government of every British possession concerned (sec. 5) in regard to a prisoner undergoing sentence in any such possession for any offence (*a*) that it is likely that his life will be endangered or his health permanently injured by further imprisonment there; or (*b*) that he belonged, at the time of committing the offence, to the Royal Navy or to Her Majesty's Regular military forces; or (*c*) that the offence was committed wholly or partly beyond the limits of the said British possession; or (*d*) that by reason of there being no prison in the said British possession in which the prisoner can properly undergo his sentence or otherwise the removal of the prisoner is expedient for his safer custody or for more efficiently carrying his sentence into effect; or (*e*) that the prisoner belongs to a class of persons who under the law of the said British possession are subject to removal under this Act—in any such case the removing authority may, subject nevertheless to the regulations in force under this Act, order such prisoner to be removed to any British possession or to the United Kingdom to undergo his sentence or the residue thereof (sec. 2).

The removal and return are to be effected by warrant under the hand of a Secretary of State or the Governor of the British possession.

Every warrant purporting to be issued in pursuance of this Act is to be received in evidence in every Court of Justice in Her Majesty's dominions without further proof, and shall be evidence of the facts therein stated, and all acts done in pursuance of such warrant shall be deemed to have been authorised by law (sec. 7, subs. (3)).

Every prisoner so removed, until he is returned, is to be dealt with in the part of Her Majesty's dominions to which he is removed in like manner as if his sentence had been duly awarded in that part But his conviction, judgment, and sentence may be questioned in the part of Her Majesty's dominions from which he has been removed in the same manner as if he had not been removed, and his sentence may be remitted and his discharge ordered in the same manner and by the same authority as if he had not been removed (sec. 8, subs. (1)).

A person guilty of the offence of aiding or attempting to aid any such prisoner so to escape, may be tried in any of the following parts of Her Majesty's dominions, namely, the part to which and the part from which the prisoner is being removed or returned, and the part in which the prisoner escapes, and the part in which the offender is found, and such offence shall be deemed to be an offence against the law of the part of Her Majesty's dominions in which he may be so tried, and for all purposes of and incidental to the apprehension, trial, and punishment of the person accused of such offence, and of and incidental to any proceedings and matters preliminary, incidental to, or consequential thereon, and of and incidental to the jurisdiction

be conclusive evidence that such order has been duly given by the Secretary of State, and every such writing as above in this section mentioned shall be admissible in evidence in any Court in Her Majesty's dominions without further proof (sec. 6, subs. (2)).

of any court, constable, or officer with reference to such offence, and to the person accused thereof, such offence shall be deemed to have been committed in the said part, and such person may be punished in accordance with the Courts (Colonial) Jurisdiction Act 1874 (37 & 38 Vict. c. 27), sec. 9, subs. (2). Sec. 10 (2).

A criminal lunatic.—Definition of, sec. 18, *inf.*, and see sec. 17, *inf.*

So far as is consistent with, etc.—*E.g.* escape or attempt to escape from custody could not be punished under sec. 9, subs. (2), in the case of a criminal lunatic.

Sentence of imprisonment.—Definition of, sec. 18, *inf.*

Separate regulations.—Separate regulations were made by Order in Council, 13th December 1889. Separate regulations.

(2) Where a person, who is a criminal lunatic by reason of being unfit to be tried for an offence, is removed in pursuance of this Act, and a Secretary of State or the Government of the British possession to or from which such person was removed considers that such person has become sufficiently sane to be tried for the said offence, and requires him to be returned for trial to the British possession from which he was removed, he shall, in accordance with the regulations under this Act, be returned as a prisoner to the said British possession for the purpose of being there tried for the said offence, and shall be removed thither in custody in like manner as if he had been arrested under a warrant on a charge for the said offence.

Sufficiently sane.—The test is fitness to plead and make his defence (*v. sup.* p. 807).

Secretary of State.—Definition of, sec. 18, *inf.* In practice the Secretary of State for the Colonies.

The British possession.—Definition of, sec. 18, *inf.*

In accordance with.—See summary of provisions, *ante* p. 849. Her Majesty in Council may make, revoke, and vary regulations as to removal, return, and discharge (sec. 4, subs. (1)).

Miscellaneous.

11. (1) The cost of the removal of any criminal lunatic under this Act and of his maintenance while in confinement, and of his return, and of his being sent after discharge to any place, shall be paid in such manner as may Cost of removal.

Sec. 11 (1), (2).

be arranged between the Governments of the British possessions concerned and the Secretary of State, subject, as regards any cost to be paid out of moneys provided by Parliament, to the consent of the *Commissioners of Her Majesty's* Treasury.

Payment of costs out of money provided by Parliament.

The cost.—It was resolved by the House of Commons in Committee on 7th July 1884 that the payment should be authorised out of moneys provided by Parliament of any costs of removal payable under this Act.[1] This Act does not affect the Lunatics Removal (India) Act 1851 (*v. sup.* p. 821, and see sec. 16, subs. (1), *inf.*).

Criminal lunatic.—Definition of, sec. 18, *inf.*, and see sec. 17, *inf.*

British possession.—Definition of, sec. 18, *inf.*, and see sec. 15, *inf.*

The Secretary of State.—Definition of, sec. 18, *inf.* In practice the Secretary of State for the Colonies.

Commissioners, etc.—See notes to sec. 4, Criminal Lunatic Asylums Act 1860, *ante.*

(2) Nothing in this Act shall affect any power to recover the expenses of removing or returning any criminal lunatic from the property of such criminal lunatic or otherwise.

See notes to preceding subsection.

Any power.—See Criminal Lunatics Act 1884, sec. 10, *inf.* As to procedure under the Lunatics Removal (India) Act 1851, see secs. 3 and 4 of that Act, *sup.*

Power of legislature of British possession to pass laws for carrying Act into effect.

12. If the legislature of a British possession pass any law—

. . . . . .

(*b*) For payment of the costs incurred in the removal, maintenance, return, or sending back after discharge of a criminal lunatic; or

(*c*) For dealing in such possession with criminal lunatics removed thereto in pursuance of this Act;

. . . . . .

it shall be lawful for Her Majesty in Council to direct that such law or any part thereof shall, with or without modifi-

[1] Hansard, 3rd ser. vol. 290, p. 373; 139 Commons' Journal, 335, 337, 343.

cation or alteration be recognised and given effect to throughout Her Majesty's dominions and on the high seas as if it were part of this Act.

Legislature.—Definition of, sec. 18, *inf.*
British possession.—Definition of, sec. 18, *inf.*, and sec. 15, *inf.*
The costs.—See notes to preceding section.
Removal . . . discharge.—See summary of provisions, *sup.* p. 849.
Criminal lunatics.—Definition of, sec. 18, *inf.*, and see sec. 17, *inf.*

Application of Act to Channel Islands and Isle of Man.

14. This Act shall extend to the Channel Islands and Isle of Man as if they were part of England and the United Kingdom.

Application of Act to place under foreign jurisdiction Acts. See 41 & 42 Vict. c. 67.

15. It shall be lawful for Her Majesty in Council from time to time to direct that this Act shall apply, as if, subject to the conditions, exceptions, and qualifications (if any) contained in the Order, any place out of Her Majesty's dominions in which Her Majesty has jurisdiction, and which is named in the Order, were a British possession and part of Her Majesty's dominions, and to provide for carrying into effect such application.

Savings. 44 & 45 Vict. c. 58.

16. (1) Nothing in this Act shall affect the provisions of the Army Act 1881.[1]

(2) This Act shall not affect any provisions contained in the Act of the Session of the fourteenth and fifteenth years of the reign of Her present Majesty, chapter eighty-one, intituled "An Act to authorise the removal from India of insane persons charged with offences, and to give better effect to inquisitions of lunacy taken in India."

See the Act, *sup.*, and notes thereon. The provisions of this Act apply to India; see definition of "British possession," sec. 18, *inf.* Under this Act, however, the concurrence of the Government of any British possession concerned is necessary before the removal can be effected (sec. 5).

17. This Act shall apply to a criminal lunatic who has

[1] See sec. 130 of Army Act 1881, and p. 884, *post.*

Sec. 17.

Application of Act to existing criminal lunatics.

become a criminal lunatic before the passing of this Act, in like manner as if he had become a criminal lunatic after the commencement of this Act.

The passing . . . the commencement.—The Act passed and commenced on the same day, viz. 28th July 1884.

Definitions.

18. In this Act, unless the context otherwise requires, the following expressions have the following meanings; that is to say,

(British possession.)

The expression "British possession" does not include any place within the United Kingdom, the Isle of Man, or the Channel Islands, but includes all other territories and places being part of Her Majesty's dominions, and all territories and places within Her Majesty's dominions which are not part of India and are under one legislature shall be deemed to be one British possession, and any part of India under a Governor or Lieutenant-Governor shall be deemed to be one British possession.

(India.)

The expression "India" means all territories and places within Her Majesty's dominions which are subject to the Governor-General of India in Council.

(Legislature.)

The expression "legislature," where there are local legislatures, as well as a central legislature, means the central legislature only, and in every part of India means the Governor-General in Council.

Secretary of State.)

The expression "Secretary of State" means one of Her Majesty's principal Secretaries of State.

(Governor.)

The expression "Governor" means any person or persons administering the government of a British possession, and includes the Governor-General of India and also the Governor and Lieutenant-Governor of any part of India.

(Colonial Secretary.)

The expression "Colonial Secretary" includes a person

performing the like duties as a Colonial Secretary, whether known as Government Secretary, Chief Secretary to the Government, or by any other title.

(Prison.)

The expression "prison" includes any place for the confinement or detention of prisoners whether convicted or unconvicted.

(Sentence of imprisonment.)

The expression "sentence of imprisonment" means any sentence involving confinement in a prison, whether combined or not with labour, and whether known as penal servitude, imprisonment with hard labour, rigorous imprisonment, imprisonment, or otherwise, and includes a sentence awarded by way of commutation as well as an original sentence passed by the court.

(Criminal lunatic.)[s]

The expression "criminal lunatic" means a person detained in custody by reason of his having been charged with an offence, and either found to have been insane at the time of such offence, or found or certified or otherwise lawfully proved to be unfit on the ground of his insanity to be tried for the same, and includes a person convicted of an offence and afterwards certified or otherwise lawfully proved to be insane.

British possession.—As to application of Acts to places under Foreign Jurisdiction Acts, see sec. 15, *sup.*

India.—See sec. 16, subs. (2), *sup.*

Secretary of State.—In practice the Secretary of State for the Colonies.

Criminal lunatic.—See sec. 17, *sup.* Three classes of persons are included in this definition:

(1) A person in custody by reason of having been charged with an offence and found insane at the time of committing it (see Trial of Lunatics Act, 1883, *sup.*).

(2) A person in custody by reason of having been charged with an offence, and found or certified or otherwise lawfully proved to be unfit on the ground of insanity to be tried for the same (Act of 1800, sec. 2, *sup.*).

(3) Persons convicted of offences and afterwards certified or otherwise lawfully proved to be insane (Criminal Lunatics Act 1884, sec. 2, *inf.*).

G

THE CRIMINAL LUNATICS ACT 1884

(47 & 48 Vict. c. 64).

An Act to consolidate and amend the Law relating to Criminal Lunatics. [14th August 1884.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Sec. 1

Short titles.

1. This Act may be cited as the Criminal Lunatics Act 1884.

The Acts mentioned in the First Schedule to this Act are in this Act referred to and may be cited by the short titles mentioned in the third column of the said Schedule.

The Criminal Lunatics Act 1884.—See notes to sec. 1 of the Trial of Lunatics Act 1883, *ante*.

Reg. v. *Peacock.*

Power to bring prisoner up for trial by *habeas corpus.*

Evidence to rebut presumption of "full opportunity" of examining deceased.

Where a prisoner was committed for trial by the magistrates to the assizes, but after committal was removed to the county lunatic asylum by a warrant from the Secretary of State, under 27 and 28 Vict. c. 29, it was held that the judge had power to issue a *habeas corpus* to bring the prisoner up for his trial.[1] In the same case it was decided that where it was proved that the prisoner was present when the depositions of the person with whose manslaughter he was charged were taken, although the law will presume that he had a "full opportunity" of examining deceased within 11 & 12 Vict. c. 42, sec. 17, evidence might nevertheless be offered of his insanity, so as to rebut this presumption.

Order for detention of insane prisoner as criminal lunatic.

2. (1) Where a prisoner is certified, in manner provided in this section, to be insane, a Secretary of State may if he thinks fit, by warrant direct such prisoner to be removed to the asylum named in the warrant, and thereupon such prisoner shall be removed to and received

[1] *Reg.* v. *Peacock*, 1870, 12 Cox C.C. 21.

in such asylum, and subject to the provisions of this Act relating to conditional discharge and otherwise, shall be detained therein, or in any other asylum to which he may be transferred in pursuance of this Act, as a criminal lunatic until he ceases to be a criminal lunatic.

Prisoner.—Definition of, sec. 16, *post.*
Certified . . . insane.—See subss. (3)-(5), *inf.*
A Secretary of State.—Definition of, sec. 16, *post.*
Asylum.—Definition of, sec. 16, *post.*
Subject to . . . otherwise.—See sec. 4, subs. (2), *inf.*, and sec. 5, subss. (2) and (3), *inf.*
Transferred.—As to the transfer of criminal lunatics, see sec. 5, subs. (1), *inf.*
Ceases to be.—See subs. (2), *inf.*
Criminal lunatic.—Definition of, sec. 16, *post.*

(2) A person shall cease to be a criminal lunatic if he is remitted to prison or absolutely discharged in manner provided by this Act, or if any term of penal servitude or imprisonment to which he may be subject determines.

Criminal lunatic.—Definition of, sec. 16, *post.*
Remitted.—See sec. 3, *inf.*
Prison.—See sec. 3, *inf.*
Absolutely discharged.—See sec. 5, subs. (2), *inf.*

(3) Where it appears to any two members of the visiting committee of a prison that a prisoner in such prison, not being under sentence of death, is insane, they shall call to their assistance two legally qualified medical practitioners, and such members and practitioners shall examine such prisoner and inquire as to his insanity, and after such examination and inquiry may certify in writing that he is insane.

Visiting committee.—See subs. (5), *inf.*
Prison.—Definition of, sec. 16, *post.*
Prisoner.—Definition of, sec. 16, *post.*
Not being under sentence of death.—As to procedure in such cases, see subs. (4), *inf.*
Insane.—The question at issue here is whether the prisoner is a

Sec. 2 (4).

person who ought to be removed to a criminal lunatic asylum. As to the test of lunacy, see *ante* p. 5.

Call to their assistance.—See *ante*, p. 133.

Question whether prisoner ought to be removed.

Two legally qualified medical practitioners.—A legally qualified medical practitioner is a medical practitioner duly registered under the Medical Act 1858 (21 & 22 Vict. c. 90), and the Acts amending the same, and the Medical Act 1886 (49 & 50 Vict. c. 48). See sec. 341 of Lunacy Act 1890, *ante*. No express power of remuneration is given.

Legally qualified medical practitioner.

Such members and practitioners.—A joint examination and a joint certificate are contemplated.

Insanity.—See *sup.* note to "insane."

(4) In the case of a prisoner under sentence of death, if it appears to a Secretary of State, either by means of a certificate signed by two members of the visiting committee of the prison in which such prisoner is confined, or by any other means, that there is reason to believe such prisoner to be insane, the Secretary of State shall appoint two or more legally qualified medical practitioners, and the said medical practitioners shall forthwith examine such prisoner and inquire as to his insanity; and after such examination and inquiry such practitioners shall make a report in writing to the Secretary of State as to the sanity of the prisoner, and they, or the majority of them, may certify in writing that he is insane.

Prisoner.—Definition of, sec. 16, *post*.

A Secretary of State.—Definition of, sec. 16, *post*.

Duty of visiting committee in case of prisoner not under sentence.

Certificate.—In the case of a prisoner not under sentence of death the duty of the visiting committee is to call in to their assistance two medical practitioners under subs. (3), *sup.*

Prison.—Definition of, sec. 16, *post*.

Legally qualified medical practitioners.—As to who are, see note to subs. (3), *sup.*

Question whether prisoner in mental state to justify execution.

Insanity.—The test of insanity here is whether the prisoner is in a mental state to justify his execution. See note to "insane" in subs. (3), *sup.*; and as to the test of lunacy, see *ante* p. 5.

Examiners may make separate reports.

A report.—If one of the examiners dissent from the opinion of the majority, there would seem to be nothing to prevent him from making a separate report. The Secretary of State is not bound to act upon the view of the majority.

May certify . . . insane.—It is only where the examining prac-

titioners are of opinion that the prisoner is insane that they are to certify. It would seem that in this case they must, and not merely "may," certify, in order to give the Secretary of State power under subs. (1), *sup.*, "where a prisoner is *certified*," etc.

Sec. 2 (5).

Query whether medical practitioner must certify if prisoner insane.

(5) The powers and duties by this section conferred and imposed on any two members of the visiting committee of a prison shall be exercised in the case of a prisoner in any prison within the jurisdiction of the Directors of Convict Prisons by the said Directors or one of them, and in the case of a prisoner in any prison within the jurisdiction of the Prison Commissioners may also be exercised by the said Commissioners or one of them, and in the case of a prisoner in any prison not within the jurisdiction of such Directors or Commissioners, shall be exercised by two visitors of the prison, or by two justices of the county or place in which such prison is situate.

The powers and duties.—As to these, see subss. (3) and (4), *ante.*

Prison.—Definition of, sec. 16, *post.*

Prisoner.—Definition of, sec. 16, *post.*

Directors of Convict Prisons.—Cp. "The Act for the Better Government of Convict Prisons" 1850 (13 & 14 Vict. c. 39), and "The Act for providing Places of Confinement in England or Wales for Female Offenders under Sentence or Order of Transportation" 1853 (16 & 17 Vict. c. 121).

The Prison Commissioners.—Cp. the Prisons Act 1877 (40 & 41 Vict. c. 21), secs. 6, 8, and 9.

Visitors.—Prisons Act, sec. 13.

Remitting of criminal lunatic to prison.

3. Where it is certified by two legally qualified medical practitioners that a person being a criminal lunatic (not being a person with respect to whom a special verdict has been returned that he was guilty of the act or omission charged against him, but was insane at the time when he committed the act or made the omission) is sane, a Secretary of State, if satisfied that it is proper so to do, may by warrant direct such person to be remitted to prison, to be dealt with according to law.

Sec. 4 (1).

Legally qualified medical practitioners.—Definition of "medical practitioner," sec. 341, *ante;* and see note to sec. 2, subs. (3), *ante.*

Criminal lunatic.—Definition of, sec. 16, *post.*

Not being a person . . . omission.—See Trial of Lunatics Act 1883 (46 & 47 Vict. c. 38), sec. 2, *ante.*

A Secretary of State.—Definition of, sec. 16, *post.*

Provisions justifying special verdict.

Remitted to prison.—This is one of several provisions in the Act which justify from the standpoint of the intention of the Legislature the special verdict referred to in this subsection. See note to sec. 1 of the Trial of Lunatics Act 1883 (46 & 47 Vict. c. 38), *ante*, and sec. 5, subss. (2), (3), *post*, as to conditional discharge of criminal lunatic.

Periodical report of criminal lunatics.

4. (1) The superintendent of an asylum or other place in which any criminal lunatic is detained shall make a report to a Secretary of State at such times (not being less than once a year) and containing such particulars as the Secretary of State may require, of the condition and circumstances of every criminal lunatic in such asylum or place; and the Secretary of State shall, at least once in every three years during which a criminal lunatic is detained in any asylum or other place, take into consideration the condition, history, and circumstances of such lunatic, and determine whether he ought to be discharged or otherwise dealt with.

Formerly no systematic revision of cases in Broadmoor.

Or any revision in county or borough asylums.

Suggestion to Commission of 1880.

Recommendation of Commissioners.

Prior to the enactment of this statute, there was no systematic revision of the cases in Broadmoor, nor does there appear to have been any revision at all of the cases of Queen's pleasure lunatics detained in county or borough asylums.[1] It was suggested to the Criminal Lunacy Departmental Commission of 1880,[2] that the order of the Court to detain any person on account of past or existing lunacy during pleasure should be accompanied by a provision that after the lapse of three years the necessity for continuing to keep that person in the custody of the State should be inquired into, and if further detention was then thought necessary, that a similar inquiry should be repeated at further intervals of time; and the Commission concurred in this suggestion, adding to it a recommendation that a full report[3] of the condition and circumstances of all Queen's plea-

[1] Departmental Commission of 1880, c. 3418, par. 11, p. 8; and see evidence of Dr. Orange, Ans. 624-29.

[2] Ans. 1584-90; and see par. 12, p. 8.

[3] A quarterly return of the mental and bodily condition of every inmate of Broadmoor had previously been made to the Secretary of State by the medical superintendent of that asylum.

Sec. 4 (2).

sure lunatics, wheresoever detained, should be made to the Home Secretary at the end of each year of detention.[1] The present section gives substantial effect to these recommendations, and introduces what is practically a recertification of criminal lunatics.[2]

The superintendent.—Definition of, sec. 16, *post.*

Asylum.—Definition of, sec. 16, *post.*

Criminal lunatic.—Definition of, sec. 16, *post.*

A Secretary of State.—Definition of, sec. 16, *post.*

At such times . . . require.—See Broadmoor Rules, 27th July 1863 (Session Papers, No. 517).

Periodical revision by medical superintendent. Objections to.

The Secretary of State shall.—It was suggested in the course of this inquiry by one member of the Departmental Commission of 1880[3] that the periodical revision should be conducted by the medical superintendent, whose duty it should be to certify formally, in the case of each person still detained, that his detention was necessary. This proposal would have thrown a heavy responsibility on the medical superintendent. Moreover, it would not have been satisfactory from the public point of view that a mere certificate by the medical officer should be allowed to reverse the verdict of a jury or a court of law on such a matter. The present section secures the double object of the exercise of a superior discretion combined with and proceeding upon full information as to the particular facts.

Responsibility on superintendent; unsatisfactory to public. Advantage of present section.

Annual revision recommended by Commission.

At least once in every three years.—The Commission recommended a revision at the end of each year, and that no person should be detained for more than three years without an order by the Home Secretary confirming the original order for his detention.[4]

Discharged.—As to discharge, see sec. 5, subss. (2) and (3), *inf.*

Otherwise dealt with, e.g. transferred (sec. 5, subs. (1), *inf.*).

(2) Where a criminal lunatic is conditionally discharged in pursuance of this Act, a report of his condition shall be made to a Secretary of State by such person at such times and containing such particulars as may be required by the warrant of discharge.

Criminal lunatic.—Definition of, sec. 16, *post.*

Conditionally discharged.—See sec. 5, subss. (2) and (3), *inf.*

A Secretary of State.—Definition of, sec. 16, *post.*

Transfer and discharge (absolute or conditional) of criminal lunatic.

5. (1) A Secretary of State may from time to time by warrant direct the transfer to an asylum of any criminal lunatic detained in any other asylum or in any other place,

[1] *Ubi sup.*, par. 13, p. 8; and 7th recommendation, p. 20.

[2] As to recertification of lunatics, see sec. 38 of the Act of 1890, *ante.*

[3] *Ubi sup.*, Ques. 625; and see Ans. 625-28.

[4] Par. 7 of Report, p. 20.

Sec. 5 (1), (2).

and such criminal lunatic shall accordingly be received and detained in the asylum to which he is so transferred.

A Secretary of State may.—Definition of Secretary of State, sec. 16, *post.*

See 23 & 24 Vict. c. 75, s. 9; 27 & 28 Vict. c. 29, s. 2; 30 Vict. c. 12, ss. 4, 5.

The Secretary of State had power to transfer criminal lunatics under the Criminal Lunatics Act 1864 (27 & 28 Vict. c. 29), sec. 2.

By warrant.—As to making and execution of warrant, see sec. 15, *post.*

Policy of transfer.

Transfer.—The policy of allowing the transfer of criminal lunatics from one asylum to another or their discharge is clear. As a class they are made up of persons in very different states of mind. Detention in such an asylum as Broadmoor, though needed at first, may after a time cease to be necessary, in consequence of a change in the condition of the patient, such as might for instance result from passing out of an active state of mental disorder into a state of dementia or fatuity. In such cases it is proper in the interests of the public and in fairness to the criminal lunatics themselves that transfers or discharges should be granted. "Every bed so vacated becomes available for the accommodation of a criminal lunatic for whose safe custody a specially equipped asylum is desirable, and experience shows that room can thus be obtained without exposing the public to any risk, provided due care be taken in the selection of the persons to be removed, and in the arrangements made for them after removal, whether to private dwellings or to ordinary lunatic asylums."[1] The exercise by the Home Secretary of his powers of discharge is all the more necessary since criminal lunatics are maintained at the public expense (see sec. 10, *post*).

Change in mental condition.

Additional accommodation afforded by.

Maintenance at public expense.

As to the transfer of criminal lunatics becoming pauper lunatics, see secs. 7 and 8, *post.*

As to restriction on powers of Secretary of State to transfer as regards lunatics not fit for ordinary asylum, see sec. 9, *post.*

Asylum.—Definition of, sec. 16, *post.*

Criminal lunatic.—Definition of, sec. 16, *post.*

Warrant sufficient authority.

Shall accordingly.—The warrant is a sufficient authority for the reception and detention.

(2) A Secretary of State by warrant may absolutely discharge any criminal lunatic, and may also discharge any criminal lunatic conditionally, that is to say, on such conditions as to the duration of such discharge and otherwise as the Secretary of State may think fit.

A Secretary of State may.—See notes to corresponding words in preceding subsection, *sup.*

[1] Cp. Report of Departmental Commission, 1880, pars. 11, 13, pp. 8 and 9.

Sec. 5 (3).

By warrant.—See notes to corresponding words in preceding subsection, *sup.*

Absolutely . . . conditionally.—As to the reasons for discharge, see note to "transfer" in preceding subsection, *sup.*

This subsection re-enacts substantially the Criminal Lunatics Act 1867 (30 Vict. c. 12), sec. 5, superseding also sec. 9 of the Criminal Lunatics Asylum Act 1860 (23 & 24 Vict. c. 75), as extended by the Act of 1867.

Any criminal lunatic.—Definition of, sec. 16, *post.*

Conditions of discharge.

On such conditions.—Up to the time when the Criminal Lunacy Departmental Commission of 1880 commenced its labours, the only condition inserted in the warrant of discharge was that the patient should return immediately into the same or other custody whenever required to do so by the Secretary of State. In October 1881, however, a female prisoner who had been convicted of an attempt to commit suicide and feloniously wounding, and, becoming insane, had been confined in Wakefield Asylum, was granted a discharge on trial for one month, at the end of which period she was absolutely discharged; and in November following a Queen's pleasure lunatic, acquitted of felony on the ground of insanity, was discharged on trial for six months, and was thereafter absolutely discharged. In each of these cases certain specific conditions were inserted in the Secretary of State's first warrant of discharge, showing that such warrant could be varied to meet exceptional circumstances as they arose. Under the present subsection express power to insert any "conditions as to duration or otherwise," is given.[1]

As to the costs of the maintenance of any criminal lunatic absolutely or conditionally discharged, see sec. 10, subs. (2), *inf.*

(3) Where in pursuance of this section a criminal lunatic has been discharged conditionally, if any of the conditions of such discharge appear to a Secretary of State to be broken, or the conditional discharge is revoked, the Secretary of State may by warrant direct him to be taken into custody, and to be conveyed to some asylum named in the warrant; and he may thereupon be taken in like manner as if he had escaped from such asylum, and shall be received and detained therein as if he had been removed thereto in pursuance of the foregoing provisions of this Act.

This subsection re-enacts sec. 5, subs. (2) of the Criminal Lunatics Act 1867 (30 Vict. c. 12). The clause as to the revocation and conditional discharges is new.

[1] Report of Criminal Lunacy Departmental Commission, 1880, par. 11, p. 8.

Sec. 6.

A criminal lunatic.—Definition of, sec. 16, *post.*

Discharged conditionally.—See notes to preceding subsection.

As to duty of superintendent in case of absolute discharge or expiration of sentence, see secs. 6 and 7, *inf.*

Any of the conditions.—As to these see notes to preceding subsection.

A Secretary of State.—Definition of, sec. 16, *post.*

Or . . . revoked.—This clause is an addition to sec. 5, subs. (2) of the Criminal Lunatics Act 1867, which this subsection re-enacts.

By warrant.—As to making and execution of warrant, see sec. 15, *post.*

Asylum.—Definition of, sec. 16, *post.*

Escaped.—As to recapture in cases of, see sec. 11, *post.*

Removed thereto . . . foregoing provisions.—See sec. 2, subs. (1), sec. 3, *sup.*

Duty of superintendent on discharge or expiration of sentence.

6. Where a person, being a criminal lunatic, is detained in any asylum or place, and either he is absolutely discharged or the term of penal servitude or imprisonment to which he is subject determines, it shall be the duty of the superintendent of such asylum or place, unless satisfied that the said person is sane, to take all reasonable means for his being placed under the care of some relation or friend, or in some asylum or place for the reception of lunatics.

A criminal lunatic.—Definition of, sec. 16, *post.*

Asylum.—Definition of, sec. 16, *post.*

Absolutely discharged.—See sec. 5, subs. (2), *sup.* A person absolutely discharged ceases to be a criminal lunatic (sec. 2, subs. (2), *sup.*).

The term . . . determines.—Thereupon the person ceases to be a criminal lunatic, sec. 2, subs. (2), *sup.*

Powers of superintendent.

Superintendent.—Definition of, sec. 16, *post.* The superintendent may either *ex proprio motu* place the person under the care of some relation or friend, or move under sec. 7, *inf.*

Question whether patient unfit to be at large.

Unless satisfied.—The question here is whether the patient is so insane as to be unfit to be at large (see sec. 7, subs. (1), *inf.*).

Whether presence of criminal among pauper lunatics detrimental to latter.

It was the opinion of the Select Committee of 1860 (*ante* p. 797) that the presence of criminal lunatics among ordinary pauper lunatics was detrimental to the latter in consequence of their being pained and offended by being forced to associate with persons who are stained with crime. The Departmental Commission of 1880 dissented from this view.[1]

[1] See a summary of their views, Report, pp. 10-13.

Sec. 7 (1).

Person ceasing to be criminal lunatic and becoming pauper lunatic.

7. (1) Where a person being a criminal lunatic is detained in an asylum or other place, or being a prisoner in any prison is certified in manner provided by this Act to be insane, but has not been directed by the Secretary of State to be removed to an asylum, and it is made to appear to any justice of the peace having jurisdiction where such asylum or place or prison is situate, or being a member of the visiting committee of such prison, by notice in writing signed by the superintendent of such asylum or place, or by the governor of such prison, either—

(*a*) that such person is about to be absolutely discharged, or

(*b*) that any term of penal servitude or imprisonment to which such person is subject is about to determine,

and that in the opinion of such superintendent or governor such person is insane and unfit to be at large, the said justice shall examine such person and make any inquiry and take any medical or other evidence which he may deem necessary respecting him.

This section, and sec. 8, *inf.*, supersede sec. 6 of the Criminal Lunatics Act 1867 (30 Vict. c. 12), as amended by sec. 2 of the Criminal Lunatics Act 1869 (32 & 33 Vict. c. 78).

Criminal lunatic.—Definition of, sec. 16, *post.*

Asylum.—Definition of, sec. 16, *post.*

Prisoner . . . prison.—Definitions of, sec. 16, *post.*

Certified.—See sec. 2, *sup.*

Directed to be removed.—Sec. 2, subs. (1), *sup.*

The visiting committee.—See sec. 2, subss. (2) and (3), *sup.* Presumably subs. (5) of sec. 2, *sup.*, as to the exercise of the powers of the visiting committee by Directors of Convict Prisons, Prison Commissioners, etc., would apply to this subsection, although it is expressly extended only to sec. 2.

Notice in writing.—The notice should contain the particulars mentioned in this subsection.

The superintendent.—Definition of, sec. 16, *post.* The superintendent may, instead of following the procedure indicated in this subsection, take steps to place the criminal lunatic under the care of some relation or friend (see sec. 6, *sup.*).

Sec. 7 (2), (3).

Absolutely discharged.—See sec. 5, subs. (2), *sup.*

A person absolutely discharged or remitted to prison for punishment, or whose term expires, ceases to be a criminal lunatic (sec. 2, subs. (3), *sup.*).

Any term.—See preceding note.

Examine . . . him.—As to examinations by a justice, see sec. 13, subs. (2) of the Act of 1890, *ante.*

As to existing criminal lunatics at date of commencement of Act, see sec. 14, *post.*

(2) The said justice, if satisfied on such examination and inquiry that such person is insane and a proper person to be detained under care and treatment, shall make an order for his detention as a lunatic in the asylum or place of confinement for lunatics named in the order; and if within one month after the date of the said notice such criminal lunatic is absolutely discharged, or such term of penal servitude or imprisonment determines, the said order shall thereupon take effect, and he shall be deemed to be a pauper lunatic.

Points as to which justice must be satisfied.

If satisfied.—The justice must also be satisfied that the criminal can be properly treated in the asylum, or that the committee of visitors of the asylum to which it is proposed to transfer him consents to receive him (sec. 9, subs. (1), *inf.*). If such consent is required and not given, he may be removed to an asylum willing to receive him, and the costs of his removal and maintenance there are to be defrayed by the committee of visitors so refusing (*ib.* subs. (2)), and he is deemed to have been sent to and detained in such asylum in pursuance of sec. 16 of the Act of 1890 (sec. 9, subs. (4), *post*).

Criminal lunatic.—Definition of, sec. 16, *post.*

Absolutely discharged.—See sec. 5, subs. (2), *ante.*

Or such term.—See sec. 6, and subs. (1) of this section, *ante.*

Shall be deemed to be.—See notes to "if satisfied," *sup.*

(3) An order under this section shall be in such form as may be prescribed by a Secretary of State, and there shall be inserted in every such order, wherever it be possible, the name and address of one or more of the relations of the lunatic.

In such form.—See form of order in Appendix, *post.*

There shall be inserted.—This part of the subsection is derived from

sec. 25 of the Lunacy Act 1862 (25 & 26 Vict. c. 111). The object of the provision is to ensure notice of the patient's death (if that should occur) to the relations named in the order, in accordance with the Rules of the Commissioners in Lunacy (*v. ante*).

Sec. 7 (4).

Object of provision.

(4) At any time before a person for whose detention an order is made under this section is detained in an asylum or place of confinement for lunatics in pursuance thereof, such order may be amended or cancelled and a new order made by the justice who made the original order, or, if such justice is unable to act, by any other justice having jurisdiction in the same place.

Before.—After the reception the order may be amended under sec. 34 of the Act of 1890, *ante*.

A person for whose detention.—As to the persons contemplated by the section, see subs. (1), *sup.*

Provision as to detention of person becoming pauper lunatic.

8. (1) Where by virtue of an order made by a justice under this Act a person becomes a pauper lunatic, such person shall for the purposes of this Act be deemed to be primâ facie chargeable to the union or parish in the United Kingdom in which it appears to the justice making the order that the ordinary residence of such person was situate at the time when the offence in respect of which he became a criminal lunatic was alleged to have been committed, and, if such residence is not shown to the satisfaction of the said justice, then to such union or parish in the United Kingdom as follows, namely,—

(*a*) To that in which it appears to the said justice that the said offence was alleged to have been committed; or

(*b*) If it appears that the offence was alleged to have been committed out of the United Kingdom, to that in which it appears to the said justice that such person was first apprehended for such offence; or

Sec. 8 (1).

(*c*) If such person appears to have been so apprehended out of the United Kingdom, to that in which it appears to the said justice that such person first landed in the United Kingdom:

Provided that, if such person appears to the justice making the order to have been a man in the naval or military service of Her Majesty, or to have been the wife or infant child of a man in such naval or military service, at the time when the offence was alleged to have been committed, such person shall for the purposes of this Act be deemed to be primâ facie chargeable to the union or parish in the United Kingdom to which the man in such naval or military service appears to the said justice from the statements in the declaration made on his entry into the naval service of Her Majesty, or in his attestation paper on enlistment, or from other available information, to be by law chargeable for the purposes of the Acts relating to the relief of the poor.

See notes to preceding section.

As to expenses of maintenance of criminal lunatics, see sec. 10, *post*.

Union or parish in the United Kingdom.—But as to where such union or parish is in Scotland or in Ireland, see subss. (3)-(5) inclusive, *post*.

Power of discharge of Secretary of State under Act of 1867.

Provided that.—Although the Secretary of State had power under sec. 5 of the Criminal Lunacy Act 1867 (30 Vict. c. 12) to discharge absolutely or conditionally any criminal lunatic, in practice he considered it inadvisable to adopt this course in the case of military and naval prisoners who had been sentenced by courts-martial abroad to penal servitude, had come to England to serve out their sentences in a convict prison, and becoming insane were finally transferred to Broadmoor. They could not be sent back to the places where their crimes were committed, and to have discharged them would have been to throw upon the officers of the parish in which the State asylum was situated the trouble and expense of getting an order on the parish of settlement under sec. 97, or upon the county under sec. 98 of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97). The same difficulty arose in the case of Scotch lunatic convicts (see notes to subs. (3), *post*.[1] The result, as pointed out by the Commis-

Not exercised in practice, why?

Result of non-exercise of power.

[1] Criminal Lunacy Departmental Commission of 1880, par. 9, p. 7, and Ans. 356, 378.

sioners of Lunacy in their Report for 1880, was that in Broadmoor there were a number of criminal patients whose terms of imprisonment had expired, but who, having been convicted out of England and Wales, could not legally be transferred to county asylums. The present proviso gives effect to the recommendation of the Departmental Commission of 1880,[1] that the Secretary of State should be empowered to discharge military and naval patients whose sentences had expired to the asylums of their places of settlement, and where these could not be ascertained, of the districts where they were enlisted.

Sec. 8 (2).

Object of proviso.

(2) Subject as hereinafter mentioned, an order made by a justice under this Act for the detention of a person as a lunatic shall, on such person becoming a pauper lunatic, have the same effect as an order of a justice, and medical certificate, made in pursuance of section sixty-eight of the Lunatic Asylums Act 1853, in the case of a lunatic found wandering at large in the union or parish to which such person is primâ facie chargeable, and all the provisions of the Lunacy Act 1845, and of the Lunatic Asylums Act 1853, and of any Acts amending those Acts or either of them shall apply accordingly in like manner as if such person had been sent from that union or parish :

16 & 17 Vict. c. 97.

8 & 9 Vict. c. 100.

16 & 17 Vict. c. 97.

And such person on becoming a pauper lunatic, if detained in an asylum or place of confinement to which lunatics may be sent in pursuance of the said Lunatic Asylums Act 1853, shall be deemed to have been received therein in pursuance of the said order of detention, and if detained elsewhere shall be removed by a person named in the order, or any constable, to the asylum or place of confinement for lunatics named in the order, being one to which a justice can send a lunatic found wandering at large in the aforesaid union or parish :

Provided that if such pauper lunatic is certified by a legally qualified medical practitioner to be unfit for removal to such last-mentioned asylum or place of confinement, he may either be removed to and detained in any nearer

[1] P. 20 (*v. ante*).

Sec. 8 (2), (3).

asylum or place of confinement for lunatics willing to receive him, or may be detained in any asylum or place in which a criminal lunatic may be detained, but in either case he shall be deemed to have been sent to the asylum or place of confinement in which he is so detained, in pursuance of section sixty-eight of the Lunatic Asylums Act 1853, and the expenses incurred in relation to such lunatic shall be defrayed, and the lunatic when fit to be removed may be removed accordingly, and where the lunatic is detained in any asylum or place to which lunatics cannot be sent, in pursuance of the Lunatic Asylums Act 1853, the provisions of the above-mentioned Acts shall apply as if such asylum or place were an asylum within the meaning of the Lunatic Asylums Act 1853, and the council of supervision or other persons having control thereof were visitors.

Subject as hereinafter mentioned.—See subss. (3)-(5) inclusive, *inf.*

An order . . . under this Act.—See sec. 7 and notes thereon, *ante.*

It was held under the Criminal Lunatics Act 1840 (3 & 4 Vict. c. 54) that an order of maintenance when served need not be accompanied with a statement of the grounds of chargeability.[1]

Made in pursuance of . . . those Acts.—By virtue of sec. 38 of the Interpretation Act 1889 (52 & 53 Vict. c. 63), the references here to sec. 68 of the Lunatic Asylums Act 1853 must be construed as references to secs. 15, 16, 17, and 19 of the Lunacy Act 1890, *ante;* and those to the Acts of 1845 and 1853 and the Acts amending the same must be construed generally as references to that statute.

Shall be deemed, i.e. conclusively taken to be (see *ante* p. 138).

The asylum or place of confinement.—See sec. 27 of the Act of 1890, *ante.*

(3) Provided that in any case where the union or parish to which a person will for the purposes of this Act be deemed to be primâ facie chargeable is in Scotland or Ireland, the justice making an order under this Act for the detention of such person as a lunatic shall report the same to a Secretary of State, and thereupon a Secretary of State

[1] *Reg.* v. *Stepney Union*, 1874, 38 J.P. 549.

may, by warrant, direct the removal of such person upon his becoming a pauper lunatic to Scotland or Ireland, as the case may be, and if he is unfit to be removed shall cause the expenses incurred in relation to such person to be paid and they shall be paid by the same persons and out of the same funds as if he had been actually removed.

Sec. 8 (3), (4).

See notes to "provided that" in subs. (1), *ante*.

Before this subsection was passed it was not practicable for the Secretary of State to discharge Scotch lunatic convicts from Broadmoor under the Criminal Lunatics Acts of 1867 (30 Vict. c. 12) and 1869 (32 & 33 Vict. c. 78). The provisions of sec. 6, subss. (1) and (2) of the Act of 1867, and sec. 2 of the Act of 1869, did not apply to Scotland; and while, under sec. 5 of the former Act, he could discharge absolutely or conditionally any criminal lunatic, it was not considered advisable to do this in the case of lunatics of the class referred to, since such a line of action would have thrown upon the officers of the parish in which the State asylum was situate the trouble and expense of getting an order on the parish of settlement under sec. 97, or upon the county under sec. 98, of the Lunatic Asylums Act 1853 (16 & 17 Vict. c. 97). An attempt was made to obviate the difficulty by removing Scotch lunatic convicts as convicts by Secretary of State warrant to Perth Prison under the powers given by the Penal Servitude Acts. But this expedient could of course only be resorted to when there was room for the reception of such cases in the prison at Perth, and before the sentence of the convict had expired. The Commissioners in Lunacy, in their Report for 1880, called attention to this defect, and the Departmental Commission of 1880[1] recommended that the Secretary of State should be empowered to remove Scotch lunatic convicts at Broadmoor whose sentences had expired to Perth General Prison, to be afterwards distributed, or direct to a district lunatic asylum.

Discharge of Scotch lunatics not practicable under Acts of 1867 and 1869.

Attempt to obviate difficulty.

Recommendation of Commissioners in Lunacy.

The present and following subsections give practical effect to this recommendation.

Effect given to by this and following subsections.

The justice making an order.—See sec. 7, *sup.*

A Secretary of State.—Definition of, sec. 16, *post.*

By warrant.—As to making and execution of warrant, see sec. 15, *post.*

(4) Where such person is removed to Scotland, he shall be removed to the general prison at Perth, and may be dealt with in the same manner as if he were a person certified to be insane in pursuance of section twenty-three of the Lunacy (Scotland) Act 1862, and had been committed

25 & 26 Vict. c. 54.

[1] Par. 6, p. 20.

Sec. 8 (5).

to a local prison for the place to which he is primâ facie chargeable.

See notes to preceding subsection, *sup.*

Criminal lunatic asylum at Perth.

The general prison at Perth.—There is a criminal lunatic asylum in connection with the general prison at Perth, regulated by special Acts (23 & 24 Vict. c. 103, and 40 & 41 Vict. c. 53). It contains all the criminal lunatics in Scotland except those who may have been removed to the ordinary asylums (under 25 & 26 Vict. c. 54, sec. 23, and 33 & 34 Vict. c. 55, sec. 4) or discharged. The Scotch lunacy law contains provisions as to (*a*) criminals found insane upon arraignment or acquitted on the ground of insanity or becoming insane during imprisonment (20 & 21 Vict. c. 71, secs. 87-89, 25 & 26 Vict. c. 54, secs. 19-21, and 34 & 35 Vict. c. 55, secs. 2 and 3), and (*b*) the conditional discharge of criminal lunatics by Secretary of State's warrant as under sec. 5 of this Act (cp. 34 & 35 Vict. c. 55, sec. 2).

Provisions of Scotch law as to criminal lunatics.

May be dealt with . . . chargeable.—See sec. 23 of the Lunacy (Scotland) Act 1862 (25 & 26 Vict. c. 54).

(5) Where such person is removed to Ireland he shall be removed to the central criminal lunatic asylum established in pursuance of the Central Criminal Lunatic Asylum (Ireland) Act 1845, and shall be received in the said central criminal lunatic asylum, and may be dealt with in manner provided by section twelve of the Lunatic Asylums (Ireland) Act 1875, as if he were a person therein confined whose sentence had expired; but he shall not, by reason only that he is for the purposes of this Act deemed to be primâ facie chargeable to any union or parish, be deemed for the purposes of the said section to belong to the district comprising such union or parish.

8 & 9 Vict. c. 107.

38 & 39 Vict. c. 67.

The central criminal lunatic asylum.—For summary of the law relating to criminal lunatics in Ireland, see *ante* p. 82.

Restriction on power of Secretary of State as regards lunatics not fit for ordinary asylum. 23 & 24 Vict. c. 75.

9. With respect to the transfer by warrant of a Secretary of State, and the removal by order of a justice under this Act, of a person from an asylum for criminal lunatics appointed by Her Majesty, in pursuance of the Criminal Lunatic Asylums Act 1860, to an asylum within the

meaning of the Lunatic Asylums Act 1853, the following provisions shall have effect: Sec. 9 (1)-(3).

(1) The Secretary of State or justice shall be satisfied either, by a certificate from a legally qualified medical practitioner, that the said person is in such a state of insanity that he can be properly treated in an ordinary asylum, or that the committee of visitors of the asylum to which the said person is proposed to be transferred or removed consents to receive him;

The transfer by warrant.—See sec. 5, subs. (1), *ante.*
The removal, etc.—See secs. 7 and 8, *ante.*
The Criminal Lunatic Asylums Act 1860.—See this Act annotated at p. 832.
The Secretary of State.—Definition of, sec. 16, *post.*
Legally qualified medical practitioner.—See note to sec. 2, subs. (3), *ante.*

(2) If the said person becomes a pauper lunatic under this Act, and the consent to receive him of the committee of visitors of the asylum is required, and is not given, he may be removed to and detained in any asylum or place in which lunatics may be detained which is willing to receive him, and the costs of his removal to and maintenance in such asylum or place shall be defrayed by the said committee of visitors;

Becomes a pauper lunatic.—See sec. 8, *ante.*
The consent . . . not given.—As to this, see preceding clause of this section, *sup.*
Costs . . . of maintenance.—Definition of, sec. 16, *post.*

(3) Where the said person has been transferred to any such asylum as a criminal lunatic, and the committee of visitors of the asylum satisfy a Secretary of State that the said criminal lunatic is in such a state of insanity that he cannot be properly

Sec. 9 (4), (5).

treated in the said asylum, and request the Secretary of State to transfer him to some other asylum, the Secretary of State shall so transfer him, and the costs of that transfer shall be defrayed by the said committee of visitors;

Criminal lunatic.—Definition of, sec. 16, *post.*
Secretary of State.—Definition of, sec. 16, *post.*

(4) Where a pauper lunatic under this section is removed to and detained in any asylum or place in consequence of the committee of visitors of an asylum not consenting to receive him, such pauper lunatic shall be deemed to have been sent to and to be detained in the said asylum or place, in pursuance of section sixty-eight of the Lunatic Asylums Act 1853;

16 & 17 Vict. c. 97.

Shall be deemed, i.e. conclusively taken to be (see *ante* p. 138).
The Lunatic Asylums Act 1853.—Now secs. 15-19 of the Lunacy Act of 1890, *ante.* (Cp. Interpretation Act 1889, 52 & 53 Vict. c. 63, sec. 38, *ante.*)

(5) Any costs directed by this section to be defrayed by a committee of visitors shall be a simple contract debt of such committee of visitors, and shall be paid as part of the general expenses of the asylum.

Actions by and against visiting committees.

A simple contract debt.—A visiting committee may sue and be sued in the name of their clerk, and an action by or against a visiting committee does not abate by the death or removal of the clerk, but the clerk for the time being is always to be deemed the plaintiff or defendant in the action (sec. 176, subs. (2) of the Lunacy Act 1890, *ante*).

Expenses, out of what fund payable.

General expenses.—These are payable out of the county or borough fund of the local authority or authorities providing the asylum (sec. 273 of the Lunacy Act 1890, *ante*).

10. (1) Subject as in this section mentioned, all expenses incurred under this Act in relation to a criminal

Sec. 10 (1).

Provision as to expenses of maintenance of criminal lunatic.

lunatic while detained in an asylum, and all expenses of removing a person on his becoming under this Act a pauper lunatic to an asylum or place of confinement for lunatics in any part of the United Kingdom, shall be defrayed out of moneys provided by Parliament, and the costs of maintenance of a criminal lunatic in any asylum within the meaning of the Lunatic Asylums Act 1853 shall be at the same rate as if he was a lunatic sent from a union or parish situate elsewhere than in the county or borough to which the asylum belongs.

16 & 17 Vict. c. 97.

Original principle of law to make parish or county responsible for maintenance of criminal lunatics defective.

Recommendation of Commission of 1880.

Resolution of 4th July 1884.

Except in the case of criminal lunatics detained at Bethlem Hospital[1] the original principle of the law was to make the parish or county responsible for the maintenance of every criminal lunatic. But this principle broke down in many cases, was abandoned in the case of lunatic convicts, and became merely a fruitful source of difficulties and anomalies. This subject is considered at length, *ante* p. 800. Accordingly the Criminal Lunacy Departmental Commission of 1880 recommended that the Government should undertake the maintenance of all criminal lunatics.[2] A resolution was passed in Committee of the House of Commons[3] on 4th July 1884 authorising the payment of all expenses under this Act—which was then before Parliament, and which passed in the following August (14th August 1884)[4]—out of moneys provided by Parliament.

Subject as in this section mentioned.—In the case of criminal lunatics absolutely or conditionally discharged (see sec. 5, subs. (2), *ante*), only such sum or sums as the Commissioners of the Treasury on the recommendation of the Secretary of State think fit, are contributed (subs. 2, *inf.*). There is power to recover charges from the lunatic's estate (subs. (3), *inf.*).

Criminal lunatics removed under the Lunatics Removal (India) Act 1851 are an exception (subs. (4), *inf.*).

Expenses . . . lunatic.—Definition of these words, sec. 16, *post.*

Becoming under this Act.—See sec. 8, *ante.*

Shall be defrayed.—See general note at commencement of section, *sup.*

Costs of maintenance.—Definition of, sec. 16, *post.*

Criminal lunatic.—Definition of, sec. 16, *post.*

Asylum.—Definition of, sec. 16, *post.*

The Lunatic Asylums Act 1853.—Now the Lunacy Act 1890. See Interpretation Act 1889 (52 & 53 Vict. c. 63, sec. 38).

[1] As to this exception, see *ante* p. 800.
[2] Report, par. 54 (9), p. 20.
[3] Hansard, 3rd ser. vol. 290, p. 75; 139 Commons' Journal, 336, 340, 344.
[4] The Act came into operation 1st November 1884.

Sec. 10 (2), (3).

The same rate, etc.—See sec. 283, subs. (3) of the Lunacy Act 1890, and notes, *ante*.

(2) Where a person, being a criminal lunatic, is absolutely discharged before the expiration of any term of penal servitude or imprisonment to which he is subject, or is conditionally discharged in pursuance of this Act, the *Commissioners of Her Majesty's* Treasury may from time to time contribute, out of moneys provided by Parliament, such sum or sums, on the recommendation of a Secretary of State, as they from time to time think fit towards the costs of the maintenance of such person, until the expiration of the said sentence, or so long as he continues to be subject to any conditions of discharge (as the case may be).

As the whole cost of the maintenance of criminal lunatics is thrown on the State during their detention, and would have remained a burden on the Treasury had they been kept in detention, it is reasonable that the State should contribute to their subsequent maintenance when from their own inability to gain a livelihood or from want of means on the part of themselves and their friends they require assistance.[1]

Criminal lunatic.—Definition of, sec. 16, *post*.

Absolutely . . . conditionally . . . discharged.—See sec. 5, *ante*.

Commissioners, etc.—See *ante* p. 836.

Out of moneys, etc.—See preceding subsection and notes thereon.

Secretary of State.—Definition of, sec. 16, *post*.

Costs of maintenance.—Definition of, sec. 16, *post*.

Conditions of discharge.—As to these, see note to sec. 5, subs. (2), *ante*.

(3) Section one hundred and four of the Lunatic Asylums Act 1853, with respect to the application of the property of a lunatic for his maintenance and for the other charges in the said section mentioned, and the other sections of the Lunatic Asylums Act 1853 which are ancillary to the said section one hundred and four, shall extend to a criminal lunatic wherever he may be detained, and to his

[1] Criminal Lunacy Departmental Commission, 1880, Report, par. 37, p. 16.

property, in like manner as if the said sections were herein re-enacted and in terms made applicable thereto, and any power exerciseable by justices under the said section may, for the purposes of this section, be exercised by two justices of the county or place where such lunatic is detained. Sec. 10 (3), (4).

The Lord Chancellor, or other authority having power to make orders with respect to the property of a lunatic, under sections twelve, thirteen, and fourteen of the Lunacy Regulation Act 1862 shall, if satisfied by affidavit or otherwise that a person is or has been a criminal lunatic, and continues to be insane and to be in confinement, have power to make any such order with respect to the property of such person, and the application thereof for the maintenance or benefit of him or his family, or for carrying on his trade or business, as may be made in pursuance of the said sections of the Lunacy Regulation Act 1862.

Lunatic Asylums Act 1853, sec. 104.—Now sec. 299 of the Lunacy Act 1890, *ante*.[1]

The practice upon an appeal against an order of removal and maintenance of a criminal lunatic pauper is the same as that upon an order of removal of an ordinary lunatic pauper.[2]

Lunacy Regulation Act 1862, secs. 12, 13, 14.—Now sec. 116, subs. (1) (*f*) of the Lunacy Act 1890, *ante*.[1]

(4) When the criminal lunatic was a person removed from India in pursuance of the Lunatics Removal (India) Act 1851, all expenses attending the removal of any such person from India, and his safe custody and maintenance, shall continue to be defrayed in the same manner as if this Act had not been passed. 14 & 15 Vict. c. 81.

Lunatics Removal (India) Act 1851.—See this statute annotated, *ante* p. 821.

The expenses, etc.—Sec. 3 of the Act of 1851, *ante*.

[1] Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 38.
[2] *Reg.* v. *Newport*, 1864, 28 J.P. 503.

Sec. 11 (1), (2).

Recapture of escaped lunatic, and punishment for rescuing or aiding to escape.

11. (1) Sections eleven and twelve of the Criminal Lunatic Asylums Act 1860 shall apply to every asylum or place in which criminal lunatics are confined so far as regards those lunatics, and to the criminal lunatics in such asylum or place, in all respects as if such asylum or place were an asylum for criminal lunatics appointed by Her Majesty in pursuance of that Act, and any officer, servant, or other person committing any such offence as is mentioned in the said section twelve shall be liable to be convicted and punished accordingly.

Secs. 11 and 12, etc.—Sec. 11 deals with recapture (*ante*). Sec. 12 with punishment for rescue or permitting escape (*ante*).

Origin of section 12.

A case was brought under the notice of the Criminal Lunacy Departmental Commission, 1880, of a Queen's pleasure lunatic who, having been transferred from Broadmoor under royal warrant to a licensed house, managed, with the connivance of a third party, to effect his escape therefrom, and an opinion was given that under the existing law the proprietor of the asylum could not be held responsible.[1] This section was intended to obviate any future difficulty of the same kind.

Asylum.—Definition of, sec. 16, *post.*

Criminal lunatics.—Definition of, sec. 16, *post.*

Punished accordingly.—See sec. 12 of the Criminal Lunatic Asylums Act 1860, *ante.*

(2) If a person escapes while being conveyed to an asylum or place in pursuance of this Act, he may be retaken at any time, in like manner as if he had escaped from the said asylum.

See notes to preceding subsection.

Treatment of imbeciles.

12. A Secretary of State may from time to time make, and when made revoke and vary, regulations for the treatment of persons sentenced to or ordered to be kept in penal servitude or imprisonment who appear, in accordance with the said regulations, to be from imbecility of mind either unfit for penal discipline or unfit for the same penal discipline as other prisoners.

[1] Report, par. 15, pp. 9 and 10.

Sec. 13.

Care and custody of imbeciles.

One of the instructions to the Criminal Lunacy Departmental Commission, 1880, was to inquire whether special provision should be made for the care and custody of imbeciles who are habitually criminal,[1] and a good deal of evidence was taken on the point.[2] Ultimately, however, the Commission determined not to delay their Report till complete evidence on all branches of the question could be obtained, and accordingly they made no general recommendations in regard to it. But it was admitted in evidence by Dr. Gover, the Medical Inspector of Government Prisons,[3] that subs. (3) of sec. 2 of the Criminal Lunatics Act 1867 (30 Vict. c. 12), which included among criminal lunatics for the purposes of that Act "any person sentenced or ordered to be kept in penal servitude, who may be shown to the satisfaction of the Secretary of State to be unfit from imbecility of mind for penal discipline," was for all practical purposes entirely disregarded. Although the discipline of the imbeciles, coming apparently under this section, was in different degrees modified, the imbeciles themselves were never certified as lunatics, and the provisions of the Act were, so far as regards them, a dead letter. The Commission recommended that these provisions should be enforced, and this section was passed to give effect to their recommendation. The Criminal Lunatics Act 1867 is repealed by this Act. See Sched. ii., *inf.*

Saving of authority of Crown to make orders.

13. Nothing in this Act shall restrain or affect the authority of Her Majesty, where she may so think fit, to make any order with respect to any person for whose safe custody during her pleasure Her Majesty is by law authorised to give order.

Any person, etc.—See sec. 2 of the Criminal Lunatics Act 1800 (39 & 40 Geo. III. c. 94, sec. 2, *ante*), sec. 2 of the Trial of Lunatics Act 1883 (46 & 47 Vict. c. 38), *ante*, and sec. 3 of the Criminal Lunatic Asylums Act 1860 (23 & 24 Vict. c. 75), *ante*.

Provision as to existing criminal lunatics.

14. (1) Subject as hereinafter provided, this Act shall apply to any person who at the commencement of this Act is, in pursuance of the Acts relating to criminal lunatics, detained in an asylum or place of confinement for lunatics; provided that any such person detained in pursuance of section six of the Criminal Lunatics Act 1867

[1] Report, par. 1, p. 3.
[2] See a summary of this evidence in pars. 51-54, pp. 19, 20.
[3] Ans. 996-99.

Sec. 14. (2).

shall on the commencement of this Act be deemed to be a person who has become under this Act a pauper lunatic.

30 & 31 Vict. c. 12.

Subject as hereinafter provided, i.e. by subs. (2), *inf.*

Commencement.—The Act commenced on 1st November 1884 (sec. 18, *post*).

A pauper lunatic.—As to persons becoming pauper lunatics under this Act, see secs. 7 and 8, *ante.*

(2) An order under this Act for the detention of any person as a pauper lunatic may be made before the commencement of this Act, but shall not take effect until such commencement.

See notes to preceding subsection, *sup.*

Making and execution of warrant of Secretary of State.

15. A warrant of a Secretary of State under this Act may be under the hand of a Secretary of State or of an Under Secretary of State, and may be executed by the person to whom it is addressed, or by any constable; and such warrant when it relates to a person not in custody may be executed in like manner as if it were a warrant for the arrest of a person charged with an offence, and it shall be the duty of every constable to aid in the execution of every warrant of a Secretary of State under this Act.

Secretary of State.—Definition of, sec. 16, *inf.*

An Under Secretary of State.—The signature of an Assistant Under Secretary is not sufficient.[1]

Terms of warrants.

The warrants under which criminal lunatics are sent to county and borough asylums show by their terms that they cease and determine whenever the lunatics are no longer in the custody of the State, by the completion of their sentence or otherwise.[2]

Interpretation of terms.

16. In this Act, if not inconsistent with the context, the following words and expressions have the meanings hereinafter assigned to them respectively; that is to say,

(Criminal lunatic.)

"Criminal lunatic" means any of the following persons:—

[1] *Reg.* v. *Marshall*, 1885, 49 J.P. 105.

[2] See Report of Departmental Commission, 1880, par. 14, p. 49.

(*a*) any person for whose safe custody during Her Majesty's pleasure Her Majesty or the Admiralty is authorised to give order; and

(*b*) any prisoner whom a Secretary of State or the Admiralty has in pursuance of any Act of Parliament directed to be removed to an asylum or other place for the reception of insane persons:

"Prison" means any prison or place of confinement to which a person may be committed whether on remand or for trial, safe custody, or punishment, or otherwise, under any other than civil process; and "prisoner" means any person so committed: (Prison.) (Prisoner.)

"Secretary of State" means one of Her Majesty's principal Secretaries of State: (Secretary of State.)

"The Admiralty" means the Lord High Admiral of the United Kingdom, or any two or more of the Commissioners for executing the office of Lord High Admiral of the United Kingdom: (The Admiralty.)

"Superintendent" includes any person in charge of an asylum or other place for the confinement of lunatics: (Superintendent.)

"Asylum" means an asylum within the meaning of the Lunatic Asylums Act 1853, and an asylum for criminal lunatics appointed by Her Majesty in pursuance of the Criminal Lunatic Asylums Act 1860, and includes a hospital registered for the reception of lunatics, but does not include a licensed house; provided that a hospital registered as aforesaid shall not be under any obligation by virtue of this Act to receive any criminal lunatic: (Asylum.) 16 & 17 Vict. c. 97. 23 & 24 Vict. c. 75.

"Costs of maintenance" include, in relation to any lunatic, the cost of the lodging, clothing, medicine, and care of such lunatic; and "expenses incurred (Costs of maintenance.)

Sec. 17.

under this Act in relation to a criminal lunatic" shall be deemed to include the costs of his maintenance as so defined.

Criminal lunatic.—See the different meanings of this term discussed *ante* p. 793.

Secretary of State.—In practice the Home Secretary.

"Admiralty," meaning of.

The Admiralty.—In the Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 12, subs. (4), "the Admiralty" is defined as the Lord High Admiral of the United Kingdom for the time being, or the commissioners for the time being executing the office of Lord High Admiral of the United Kingdom.

Lunatic Asylums Act 1853.—Now the Lunacy Act of 1890 (Interpretation Act of 1889, sec. 38).

Object of exception.

A licensed house.—The object of this exception was to give effect to the recommendation of the Departmental Commission of 1880 that criminal lunatics should not be provided for or boarded in licensed houses.[1] See also case of escape from licensed house, noted *sup.*, sec. 11, subs. (1).

Deemed, i.e. taken conclusively (see *ante* p. 138).

Repeal.

17. The Acts mentioned in the Second Schedule to this Act are hereby repealed, as from the commencement of this Act, to the extent shown in the third column of the said Schedule; but this repeal shall not affect any warrant issued, or order made, or thing done in pursuance of any enactment so repealed.

See notes to sec. 342 of the Lunacy Act 1890, *ante.*

Commencement and extent of Act.

18. This Act shall, save as in this Act otherwise provided, come into operation on the first day of November, one thousand eight hundred and eighty-four, which day is in this Act referred to as "the commencement of this Act."

Save as in this Act otherwise expressly provided, this Act shall not extend to Scotland or Ireland.

Save as in this Act.—See sec. 14, *ante.*

Come into operation.—The Act passed on 14th August 1884.

Scotland or Ireland.—See secs. 8 and 10, *ante.*

[1] Report, par. 54 (8), p. 20.

THE FIRST SCHEDULE.

Section 1.

Session and Chapter.	Title.	Short Title.
8 & 9 Vict. c. 100 .	An Act for the regulation of the care and treatment of lunatics	The Lunacy Act 1845.
8 & 9 Vict. c. 107 .	An Act for the establishment of a central asylum for insane persons charged with offences in Ireland; and to amend the Act relating to the prevention of offences by insane persons, and the Acts respecting asylums for the insane poor, in Ireland; and for appropriating the lunatic asylum in the city of Cork to the purposes of a district lunatic asylum	The Central Criminal Lunatic Asylum (Ireland) Act 1845.
14 & 15 Vict. c. 81 .	An Act to authorise the removal from India of insane persons charged with offences, and to give better effect to inquisitions of lunacy taken in India	The Lunatics Removal (India) Act 1851.
23 & 24 Vict. c. 75 .	An Act to make better provision for the custody and care of criminal lunatics	The Criminal Lunatic Asylums Act 1860.
25 & 26 Vict. c. 54 .	An Act to make further provision respecting lunacy in Scotland	The Lunacy (Scotland) Act 1862.

This is a "short titles" Schedule (see sec. 1, *ante*).
8 & 9 Vict. c. 100.—See *ante* p. 72.
8 & 9 Vict. c. 107.—See notes to sec. 8, subs. (5), *ante*.
14 & 15 Vict. c. 81.—See this Act annotated, *ante* p. 821.
23 & 24 Vict. c. 75.—See this Act annotated, *ante* p. 832.
25 & 26 Vict. c. 54.—See sec. 8, subs. (4).

Section 17.

THE SECOND SCHEDULE.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
3 & 4 Vict. c. 54 . .	An Act for making further provision for the confinement and maintenance of insane prisoners	The whole Act.
6 & 7 Vict. c. 26. .	An Act for regulating the prison at Millbank	Section twenty-one.
16 & 17 Vict. c. 96 .	An Act to amend an Act passed in the ninth year of Her Majesty "for the regulation of the care and treatment of lunatics"	Section thirty-eight from and including the words "save as hereinafter provided" to the end of that section.
23 & 24 Vict. c. 75 .	An Act to make better provision for the custody and care of criminal lunatics	Section two, the words "of the Acts hereinbefore mentioned, or under any other," and the words "or to be unfit from imbecility of mind for penal discipline." Sections seven, nine, and ten.
25 & 26 Vict. c. 86 .	The Lunacy Regulation Act 1862	Section fifteen.
27 & 28 Vict. c. 29 .	An Act to amend the Act third and fourth Victoria, chapter fifty-four, for making further provision for the confinement and maintenance of insane prisoners	The whole Act.
29 & 30 Vict. c. 109 .	The Naval Discipline Act 1866	Section eighty, so far as relates to a person imprisoned in England.
30 & 31 Vict. c. 12 .	The Criminal Lunatics Act 1867	The whole Act.
32 & 33 Vict. c. 78 .	The Criminal Lunatics Act 1869	The whole Act.
44 & 45 Vict. c. 58 .	The Army Act 1881	In section one hundred and thirty so much of subsection five as relates to a person imprisoned in England.
46 & 47 Vict. c. 38 .	The Trial of Lunatics Act 1883	Subsection three of section two.

The Acts in this Schedule are repealed (sec. 17, *sup.*).
3 & 4 Vict. c. 54.—See *ante* p. 797.
6 & 7 Vict. c. 26.—See sec. 2, subs. (4), *ante.*
16 & 17 Vict. c. 96.—See *ante* p. 72.
23 & 24 Vict. c. 75.—See *ante* p. 832.
25 & 26 Vict. c. 86.—See *ante* p. 333.

II.

THE RULES IN MACNAUGHTON'S CASE.[1]

It may be convenient to preface an analysis of the Rules in Macnaughton's Case with a sketch of the development of the law as to the criminal responsibility of the insane.

Historical Development of Law as to Insanity in Relation to Criminal Responsibility.

The law of England as to insanity in relation to criminal responsibility is still governed by the answers of the Judges to the questions propounded to them by the House of Lords after the acquittal of Daniel Macnaughton in 1843 on his trial for the murder of Mr. Drummond, whom he shot by mistake for Sir Robert Peel. These answers are not, however, capable of being fully understood without reference to the previous history of the law on the subject.

Views of Coke and Hale.

The views of Coke (1625) and Sir Matthew Hale[2] (1609-76) may be passed over rapidly. Both were agreed that in criminal causes, as in felony, etc., the act and wrong of a madman shall not be imputed to him; both drew, although in different terms, a distinction between *dementia naturalis*, or *a nativitate*, and *dementia accidentalis* or *adventitia;* and the main points in which the writings of Hale mark an advance on those of Coke are (1) his elaboration of the doctrine of partial insanity, to which reference will be made immediately, and (2) his statement of the test of irresponsible lunacy in such cases. "The best measure I can think of is this: such a person as, labouring under melancholy distempers, hath yet ordinarily as great understanding as a child of fourteen years hath, is such a person as may be guilty of treason or felony." Sir James Stephen in criticising Hale's test of partial insanity observes:[3] "Surely no two states of mind can be more unlike than that of a healthy boy of

Child of fourteen theory.

Sir James Stephen's criticism.

[1] See for report of case *Times*, 4th and 6th March 1843; Session Papers, C.C.C.; State Trials, N.S., vol. iv. p. 847; reported as *Reg.* v. *M'Naghten*, 10 Cl. & F. 200 *et seq.*

[2] P.C. 26-30.

[3] *Hist. of Criminal Law*, vol. ii. p. 150.

fourteen and that of a man labouring under melancholy distempers. The one is healthy immaturity, the other diseased maturity; and between them there is no sort of resemblance."

Arnold's case, 1723.

Our law of criminal responsibility was destined, however, to undergo still further degeneration. On the trial of Edward Arnold at Kingston in 1723[1] for firing at and wounding Lord Onslow, Mr. Justice Tracy, in charging the jury, said that: "A prisoner, in order to be acquitted on the ground of insanity, must be a man that is totally deprived of his understanding and memory, and doth not know what he is doing no more than an infant, than a brute or wild beast." It is observable that here the vague term "infant" is substituted for Hale's "child of fourteen," and the words "brute" and "wild beast" are added. Arnold was, of course, convicted, but the capital sentence passed upon him was afterwards commuted, at Lord Onslow's instance, to one of imprisonment for life. He laboured under the delusion that Lord Onslow sent devils into his room at night to disturb his rest and plague him, and was clearly entitled to an acquittal.

Wild beast theory.

Earl Ferrer's case, 1760.

In 1760 Earl Ferrer[2] was convicted and executed for the murder of his steward, also in conformity with "the infant and wild beast theory," which was expounded to the jury by the Solicitor-General of the day, with a slight variation, viz. that the prisoner must be convicted unless it could be shown that he had not sufficient capacity to form a design and to know its consequences. The Earl was certainly insane, and the only ground on which his punishment can be justified is that assigned by Smollett:[3] "Perhaps it might be no absurd or unreasonable regulations in the Legislature to divest lunatics of the privilege of insanity and in cases of enormity subject them to the common penalties of the law; for though in the eye of casuistry consciousness must enter into the constitution of guilt, the consequences of murders committed by a maniac may be as pernicious to society as those of the most criminal and deliberate assassination, and the punishment of death can hardly be deemed unjust or rigorous when inflicted upon a mischievous being divested of all the perceptions of reason." This doctrine seems to have survived the time of Smollett. In charging a grand jury at Bodmin some years ago (27th February 1891), Lord Coleridge remarked that it was said by a legal authority, when he was a young man, that if a person was guilty of murder he should be hanged, whether he was sane or not, for if he was sane he deserved it, and if he was mad it did him no harm.

Capacity to form design and know its consequences.

Smollett's view.

Hadfield's case, 1800.

A distinct advance on the law as to the criminal responsibility of the insane was made in *Hadfield's case*.[4] James Hadfield was tried before Lord Kenyon, L.C.J., and Grose, Lawrence, and Le Blanc, JJ., for high treason in shooting at George III. in Drury Lane Theatre on 15th May 1800. The undisputed facts were that Hadfield (whose head had been almost cut to pieces by sabre wounds in the Battle of Lincelles, and who had been confined in a lunatic asylum) was on

[1] 1723, 16 How. St. Tr. 764.
[2] 1760, 19 How. St. Tr. 886.
[3] *Hist. Eng.* vol. v. 198-208.
[4] 1800, 27 How. St. Tr. 1281.

the night of the attempted murder of the King full of the wildest delusions (*e.g.* that he had constant intercourse with the Almighty, that the world was coming to an end, and that he, like the Saviour, was to sacrifice himself for its salvation), and that he went to the theatre to shoot the King in order that he might avoid suicide, and have his life, by the appearance of crime, taken away from him by others. The evidence for the defence was stopped by Lord Kenyon, who laid down the law to the jury in the following terms: "With regard to the law there can be no doubt on earth. To be sure if a man is in a deranged state of mind at the time,[1] he is not criminally answerable for his acts; but the material part of the case is whether at the very time when the act was committed the man's mind was sane." On this charge the jury, of course, acquitted the prisoner; but, as has been well pointed out by Dr. Orange in his article on "Criminal Responsibility" in Dr. Hack Tuke's *Dictionary of Psychological Medicine* (vol. i. p. 301), it is difficult to see how the verdict can be reconciled with the statement of the law as set forth in *Hadfield's case* by the Attorney-General (Sir John Mitford, afterwards Lord Redesdale), that "if a man be completely deranged so that he knows not what he does, if he be lost to all sense that he cannot distinguish good from evil and cannot judge of the consequences of his action, then the mercy of the law says that he cannot be guilty of any crime, because the will, which to a certain extent is the essence of every crime, is wanting." It may also be observed that Lord Kenyon's charge is equally inconsistent with the tests of criminal responsibility prescribed by Sir Matthew Hale and Mr. Justice Tracy above referred to.

Was the man's mind sane?

On the trial of John Bellingham[2] in 1812 for the murder of the Rt. Hon. Spencer Perceval, the First Lord of the Treasury, by shooting him with a pistol in the lobby of the House of Commons, Sir James Mansfield laid down another criterion of criminal responsibility in mental disease, which, although less humane and scientific than that adopted by Lord Kenyon in *Hadfield's case*,[3] was a decided improvement on the doctrine promulgated by Mr. Justice Tracy on the trial of Arnold in 1723. "The question," said Sir James Mansfield, "is this, whether you are satisfied that he (Bellingham) had a sufficient degree of capacity to distinguish between good and evil and to know that he was committing a crime when he committed this act; in that case you will find him guilty." Bellingham was convicted and sentenced to death. The case was pushed on to trial and execution with the most indecent haste. The murder was committed on 11th May 1812. The trial took place on 15th May, and an application for a postponement in order that evidence of the prisoner's

Bellingham's case, 1812.

Right and wrong in abstract theory.

[1] In *Reg.* v. *Parker*, 1812, Shelf. Lun. 590, 1 Coll. Lun. 477, the Attorney-General stated in argument that insanity must be shown to have existed at the moment of the act. But Lord Kenyon in *Hadfield's case* put the question on its true basis, viz. that while the very time of committing the offence is the critical period, the jury may be satisfied that the prisoner was irresponsible then, *inter alia*, from his mental state anteriorly.

[2] *Times*, 16th May 1812.

[3] 1800, 27 How. St. Tr. 1281.

insanity might be adduced having been refused, Bellingham was executed three days later.

Bowler's case, 1812.

Sir James Mansfield's summing up in this case was impliedly followed a few months later in the same year by Sir Simon le Blanc on the trial of Thomas Bowler[1] for firing a loaded blunderbuss at a person named William Burrowes. The learned Judge said: "It is for you to determine whether the prisoner, when he committed the offence with which he stands charged, was or was not incapable of distinguishing right from wrong, or whether he was under the influence of any delusion with respect to the prosecutor which rendered his mind at the moment insensible of the nature of the act he was about to commit, since in that case he would not be legally responsible for his conduct. On the other hand, provided you should be of opinion that when he committed the offence he was capable of distinguishing right from wrong, and was not under the influence of such a delusion as disabled him for distinguishing that he was doing a wrong act; in that case he is answerable to the justice of his country and guilty in the eye of the law."

Bowler was found guilty and executed, although he had been declared by a jury to be insane before the commission of the act with which he was charged, as well as at the time of its commission, and (in the language of Mr. Baron Alderson in *Oxford's case*),[2] "very barbarous it was."

Oxford's case, 1840.

On the trial of Edward Oxford[2] upon a charge of high treason for firing at the Queen with loaded pistols, Lord Chief-Justice Denman appears in the main to have laid down the law in similar terms, though there is one passage in his summing up which suggests a return to the doctrine of Lord Kenyon in *Hadfield's case*.[3]

Macnaughton's case, 1843.

In March 1843 Daniel Macnaughton[4] was tried at the Central Criminal Court before Lord Chief-Justice Tindal, Mr. Justice Williams, and Mr. Justice Coleridge, for the wilful murder of Mr. Edward Drummond, the private secretary of Sir Robert Peel. It was clearly proved that the prisoner insanely believed himself to be the victim of a fancied persecution by the Tory party, and that, after having appealed to the authorities for protection against his imaginary persecutors, he formed the design of shooting Sir Robert Peel, by whose death he expected to derive relief from his tormentors, and that he mistook Mr. Drummond for the Prime Minister.

Cockburn's argument.

Mr. (afterwards Lord Chief-Justice) Cockburn, who defended the prisoner, revived the theory of Coke and Hale as to partial insanity. "I do not," he said, "put this case forward as one of total insanity; it is a case of delusion. I have endeavoured to show the distinction between partial delusion and complete perversion and prostration of intellect." After referring to Marc's *De la Folie* (p. 25), Mr. Cockburn proceeded: "I trust that I have satisfied you that the disease of partial insanity can exist, that it can lead to a partial or total aberration of the moral senses and affection which may render

[1] *Times*, 4th July 1812.
[2] 1840, 4 St. Tr., N.S., 498; 9 C. & P. 533.
[3] See note 3, p. 887.
[4] 1843, 4 St. Tr., N.S., 847.

the wretched patient incapable of resisting the delusion, and lead him to commit crimes for which morally he cannot be held to be responsible, and in respect of which he is withdrawn from the operation of human laws."

Statement of law by Tindal, C.J.

After several medical witnesses had been called for the defence, the Lord Chief-Justice stopped the case, and stated the law to the jury in the following terms: "The point I shall have to submit to you is whether, on the whole of the evidence you have heard, you are satisfied that at the time the act was committed, for the commission of which the prisoner now stands charged, he had that competent use of his understanding as that he knew that he was doing, by the very act itself, a wicked and a wrong thing.[1] If he was not sensible at the time he committed that act, that it was a violation of the law of God or of man, undoubtedly he is not responsible for that act, or liable to any punishment whatever flowing from it." At the close of his address, the learned Judge said: "If, upon balancing the evidence in your minds, you should think the prisoner a person capable of distinguishing right from wrong *with respect to the act with which he stands charged*, he is then a responsible agent and liable to the penalties imposed upon those who commit the crime of which he is accused." Macnaughton was at once acquitted on the ground of insanity.

Discussion in the Lords.

The trial ended on 4th March 1843. Two days later an animated discussion on the case and on the doctrine of partial insanity was initiated in the House of Lords by Lord Brougham; and on 13th March[2] their Lordships resolved to take the opinion of the Judges as to the law respecting crimes committed by persons afflicted with insane delusions.

Opinion of Judges taken.

The Judges duly attended the Upper House on 26th May, but no questions were put. On 19th June, however, the five questions about to be considered were put without argument and answered. All of the Judges concurred in the answers except Mr. Justice Maule, who answered the questions separately.

Answers.

Authority of.

It may be desirable to conclude this note by a reference to the vexed question of the authority of the Rules in *Macnaughton's case*, which adopted Chief-Justice Tindal's view of the law. It is indisputable that the House of Lords is entitled to the assistance of the Judges in regard to any questions coming before it judicially.

Origin of custom of asking opinion of Judges.

The origin of this custom of the constitution is to be found in the fact that the Judges were members of the *magnum concilium*, and received a writ of summons to attend Parliament in their advisory character.

When Judges may decline to answer.

There is authority to the effect that the Judges may decline to answer questions relating to matters outside existing law

[1] Followed by Tindal, C.J. in *R.* v. *Vaughan*, 1844, 1 Cox C.C. 80; and cp. *Reg.* v. *Higginson*, 1843, 1 C. & K. 129; *Reg.* v. *Davies*, 1853, 1 F. & F. 69-72 (an arson case, where a verdict that the prisoner "was in such a state of mind that he did not know that the effect of" (his act) "would be to injure any other person," was construed as one of "not guilty"); *Reg.* v. *Richards*, 1858, *ib.* 87; *Reg.* v. *Leigh*, 1866, 4 F. & F. 915; *Reg.* v. *Southey*, 1865, *ib.* 864. *Commonwealth* v. *Rogers*, 1844, 7 Met. (Mass.), 500; *Dormay* v. *Borrodaile*, 1847, 5 C.B. 380.

[2] Cp. Hansard, vol. 67, p. 724.

and practice, or, in appeal cases, wholly beyond the scope of the inquiry before the House of Lords. On the other hand, in the face of the precedents mentioned in the debate on *Macnaughton's case*[1] (Fox's Libel Bill (29 Parl. Hist. 1861), the Canada Reserves, and the usury laws), and of the express authority given to the proposition in *Macnaughton's case*[1] it seems impossible to deny that abstract questions of law may be put to the Judges—the answers to which may be necessary to the House of Lords in its legislative capacity. It is also to be borne in mind that the Judges (with the partial exception of Mr. Justice Maule, whose answers were strongly suggestive of his opinion that the questions ought not to have been put) *did* answer the legal conundrums propounded to them by the House of Lords, and also that for now half a century the Rules in *Macnaughton's case* have been to a large extent accepted in this country as embodying the law on the subjects with which they deal.[2] It is, however, extremely doubtful whether they are binding on the Courts, as they were not judicial decisions, and did not relate to any matter that was before the House of Lords, either in its legislative or in its judicial capacity —unless, indeed, the possibility that legislation may be required is sufficient for the purpose of clothing such answers with *quasi*-legislative authority.

Abstract questions to assist Lords in legislative capacity.

First question of House of Lords.

"1st.—What is the law respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons; as, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?

Second question of House of Lords

"2nd.—What are the proper questions to be submitted to the jury when a person, alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for example), and insanity is set up as a defence?

Third question of House of Lords.

"3rd.—In what terms ought the question to be left to

[1] 1843, 10 Cl. & F. 200.

[2] See cases cited *sup.* note 1, p. 889, and cp. *Reg.* v. *Townley*, 1863, 3 F. & F. 839; *Reg.* v. *Burton*, 1863, *ib.* 772.

the jury as to the prisoner's state of mind at the time when the act was committed?

Fourth question of House of Lords.

"4th.—If a person under an insane delusion as to existing facts commits an offence in consequence thereof, is he thereby excused?

Fifth question of House of Lords.

"5th.—Can a medical man, conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial, and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious at the time of doing the act that he was acting contrary to law, or whether he was labouring under any and what delusion at the time?"

Mr. Justice Maule's preliminary observations.

MAULE, J.—I feel great difficulty in answering the questions put by your Lordships on this occasion:—First, because they do not appear to arise out of, and are not put with reference to a particular case, or for a particular purpose, which might explain or limit the generality of their terms, so that full answers to them ought to be applicable to every possible state of facts not inconsistent with those assumed in the questions; this difficulty is the greater from the practical experience both of the Bar and the Court being confined to questions arising out of the facts of particular cases: secondly, because I have heard no argument at your Lordships' Bar or elsewhere on the subject of these questions, the want of which I feel the more the greater is the number and extent of questions which might be raised in argument: and, thirdly, from a fear, of which I cannot divest myself, that as these questions relate to matters of criminal law of great importance

and frequent occurrence, the answers to them by the Judges may embarrass the administration of justice when they are cited in criminal trials. For these reasons I should have been glad if my learned brethren would have joined me in praying your Lordships to excuse us from answering these questions, but as I do not think they ought to induce me to ask that indulgence for myself individually, I shall proceed to give such answers as I can, after the very short time which I have had to consider the questions, and under the difficulties I have mentioned, fearing that my answers may be as little satisfactory to others as they are to myself.

The Judges' preliminary observations.

TINDAL, C.J.—My Lords, Her Majesty's Judges, with the exception of Mr. Justice Maule, who has stated his opinion to your Lordships, in answering the questions proposed to them by your Lordships' House, think it right in the first place to state that they have forborne entering into any particular discussion upon these questions, from the extreme and almost insuperable difficulty of applying those answers to cases in which the facts are not brought judicially before them. The facts of each particular case must of necessity present themselves with endless variety, and with every shade of difference in each case; and as it is their duty to declare the law upon each particular case, on facts proved before them, and after hearing argument of counsel thereon, they deem it at once impracticable, and at the same time dangerous to the administration of justice if it were practicable, to attempt to make minute applications of the principles involved in the answers given by them to your Lordships' questions.

They have, therefore, confined their answers to the statement of that which they hold to be the law upon the abstract questions proposed by your Lordships; and as

they deem it unnecessary, in this peculiar case, to deliver their opinions *seriatim*, and as all concur in the same opinion, they desire me to express such their unanimous opinion to your Lordships.

Mr. Justice Maule's first answer.

The first question, as I understand it, is in effect, what is the law respecting alleged crime, when at the time of the commission of it the accused knew he was acting contrary to the law, but did the act with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury or of producing some supposed public benefit? If I were to understand this question according to the strict meaning of its terms, it would require in order to answer it a solution of all questions of law which could arise on the circumstances stated in the question, either by explicitly stating and answering such questions, or by stating some principles or rules which would suffice for the solution. I am quite unable to do so, and indeed, doubt whether it be possible to be done, and therefore request to be permitted to answer the question only so far as it comprehends the question whether a person, circumstanced as stated in the question, is for that reason only to be found not guilty of a crime respecting which the question of his guilt has been duly raised in a criminal proceeding; and I am of opinion that he is not. There is no law that I am aware of that makes persons in the state described in the question not responsible for their criminal acts. To render a person irresponsible for crime on account of unsoundness of mind, the unsoundness should, according to the law as it has long been understood and held, be such as to render him incapable of knowing right from wrong. The terms used in the question cannot be said (with reference only to the usage of language) to be equivalent to a description of this kind and degree of

unsoundness of mind. If the state described in the question be one which involves, or is necessarily connected with, such an unsoundness, this is not a matter of law, but of physiology, and not of that obvious and familiar kind as to be inferred without proof.

Observations on.

The only observations for which this answer seems to call are (1) that it merely relates to the question whether a person knowingly acting contrary to the law, but under an insane delusion as to the facts, is *for that reason only* to be held irresponsible; (2) that Mr. Justice Maule appears to accept the abstract right and wrong theory (see *ante* p. 887) as *primâ facie* the correct and binding one; but (3) that he leaves it open for the prisoner to show by physiological proof that the state described in the question does amount to legal unsoundness of mind.

The Judges' first answer.

The first question proposed by your Lordships is this: "What is the law respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons; as, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed benefit?"

In answer to which question, assuming that your Lordships' inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane, we are of opinion, that notwithstanding the party accused did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew at the time of committing such crime, that he was acting contrary to law, by which expression we understand your Lordships to mean the law of the land.

Inquiries.—It would almost appear from the use of the plural form of this word that the Judges did not regard the questions of the House of Lords as independent.

Query whether questions regarded as independent.

Confined.—The form both of the question and of the answers in *Macnaughton's case* supports the view of Chief-Justice Cockburn,[1] as opposed to that of Baron Parke,[2] that the answers embodied only so much of the law as was necessary to exhaust the points raised by the questions.

Query whether answers limited to points raised by question.

Such partial delusions.—The House of Lords did not employ this expression, which seems to have been borrowed by the Judges from a question put to Dr. Monro by Mr. (afterwards Chief-Justice) Cockburn in defending Macnaughton: "Is it consistent with the pathology of insanity that a partial delusion may exist depriving a person of all self-control, whilst the other faculties may be sound?" to which the witness replied, "Certainly, monomania may exist with general sanity." The words "partial delusion" and "monomania" are equally unhappy, although ample authority is to be found for their use. They have encouraged the mistaken idea which has lain at the root of nearly all the worst errors in regard to the criminal responsibility of the insane, that in the same mind insanity in one faculty and perfect mental soundness in all the rest may co-exist. The phrase used by the House of Lords—"insane delusion in respect of one or more particular subjects or persons"—is much less objectionable than either "partial delusion" or "monomania," and points to a real pathological condition.

"Partial delusions."

Mono-mania.

Objection to terms.

In other respects insane.—It would follow from this that if the person in the hypothetical case put by the House of Lords were "in other respects insane," he would be entitled to an acquittal, even although he committed a crime under the direct influence of a delusion as to particular persons and subjects, and knew at the time that he was acting contrary to the law of the land. No definition, however, is given of the words "in other respects insane." But this is one of the points at which the answers in *Macnaughton's case* lend themselves to that delicate judicial manipulation which has saved them from being productive of any substantial injustice.

"In other respects insane."

The influence of insane delusion.—An insane delusion is for the purposes of civil,[3] and presumably also of criminal law, not merely an unfounded though colourable suspicion, nor even a belief which no rational person would have entertained; it is a persistent and incorrigible belief that things are real which exist only in the imagination of the patient, and which no rational person can conceive that the patient when sane would have believed.

"Insane delusion," meaning of.

Supposed grievance or injury.—The cases of Bellingham and Macnaughton are illustrations of this class (*ante* pp. 887, 888).

"Supposed grievance or injury."

Some public benefit, e.g. Hadfield, who thought that he was destined to bring about the salvation of the world (*ante* p. 886).

"Some public benefit."

[1] Letter on Criminal Code Bill ordered by House of Commons to be printed on 6th June 1877.

[2] Capital Punishment Commission, 1875, Ques. 362.

[3] See *ante* p. 51.

Sir James Stephen's interpretation of "knew."

If he knew, etc.—In Sir James Stephen's opinion, a man cannot be said to *know* within the meaning of this rule unless he is capable of steadily viewing, and passing a judgment upon, the quality of the act before him (see p. 899).

Evidence of incapacity before and after act, how far relevant.

At the time of committing.—Evidence of incapacity *before* and *after* a criminal act is, of course, valuable as throwing light upon the mental state of the accused at the critical period.

Knowledge of nature and quality of particular act now the test.

He was acting.—Knowledge of the nature and quality of the particular act is now the test of criminal responsibility. This limitation was probably introduced by the Judges from the Scotch law. "The great characteristic of insanity," said Alison,[1] " which originates in the general case in an excessive turning of the mind to its own affairs, consists in an alienation of reason with reference to itself, and in the illusions under which it labours and the chimeras it has nourished in regard to its own concerns. Few men are mad about others, or things in general ; many about themselves. Although therefore the panel " (*i.e.* prisoner) " understands perfectly the distinction between right and wrong, yet if he labours, as is generally the case, under an illusion and deception as to his own particular case, and is thereby disabled from applying it correctly to his own conduct, he is in that state of mental alienation which renders him not criminally answerable for his action."

Alison's statement.

Evidence of hereditary insanity, whether admissible.

Semble, evidence of hereditary insanity is admissible to prove want of knowledge on the part of a prisoner of the nature and quality of his act, after proof, by experts, that as a fact insanity or the particular form of insanity alleged *is* hereditary.[2]

"Contrary to law."

Contrary to law . . . the law of the land.—If the term "knew" is not interpreted in the sense suggested by Sir James Stephen this answer, taken alone, would involve the conviction of persons of the mental calibre of Hadfield and Macnaughton.

Mr. Justice Maule's second answer.

Second, the questions necessarily to be submitted to the jury are those questions of fact which are raised on the record. In a criminal trial, the question commonly is, whether the accused be guilty, or not guilty ; but in order

[1] *Principles of the Criminal Law*, p. 465. *Macnaughton's case* was followed in Scotland in *H.M. Advocate* v. *Gibson*, 1844, 2 Broun 332.

[2] Cp. *Reg.* v. *Oxford*, 1840, 9 C. & F. 547. It is doubtful, however, how far such evidence is admissible in civil cases. Cp. *M'Adam* v. *Walker*, 1813, 1 Dow. P.C. 173, 174, 177 ; *Doe d. Mather* v. *Whitefoot*, 1838, 8 C. & P. 272. In the Ecclesiastical Courts it was admissible as to near, but not as to collateral, relatives (cp. *Tyrell* v. *Jenner*, 1829, cit. 3, Curt., at p. 667 ; *Frere* v. *Peacocke*, 1843, *ib.* 664 ; *Turner* v. *Penny*, 1843, cit. *ib.* 669). It is submitted (1) that no distinction ought to be drawn in this matter between civil and criminal cases, and (2) that any objection to testimony on the ground of remoteness should lie against its credibility rather than against its competency. In *H.M. Advocate* v. *Gibson*, 1844, 2 Broun 332, evidence that the maternal aunt of the prisoner had been afflicted with insanity was held inadmissible ; and cp. *H.M. Advocate* v. *Dingwall*, 1867, 5 Irv. 466.

to assist the jury in coming to a right conclusion on this necessary and ultimate question, it is usual and proper to submit such subordinate or intermediate questions as the course which the trial has taken may have made it convenient to direct their attention to. What those questions are, and the manner of submitting them, is a matter of discretion for the Judge—a discretion to be guided by a consideration of all the circumstances attending the inquiry. In performing this duty, it is sometimes necessary or convenient to inform the jury as to the law; and if, on a trial, such as is suggested in the question, he should have occasion to state what kind and degree of insanity would amount to a defence, it should be stated conformably to what I have mentioned in my answer to the first question as being, in my opinion, the law on this subject.

Mr. Justice Maule's third answer.

Third, there are no terms which the Judge is by law required to use. They should not be inconsistent with the law as above stated, but should be such as, in the discretion of the Judge, are proper to assist the jury in coming to a right conclusion as to the guilt of the accused.

Observation on Mr. Justice Maule's second and third answers.

The only observation for which these answers call is that they have no other object than to leave the discretion of the Judge as unfettered as possible.

The Judges' second and third answers.

Your Lordships are pleased to inquire of us, secondly: "What are the proper questions to be submitted to the jury, where a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons is charged with the commission of a crime (murder, for example) and insanity is set up as a defence?" And, thirdly: "In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when the act was committed?" And as these two questions appear to us to be more conveniently answered

together, we have to submit our opinion to be, that the jury ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused at the time of doing the act knew the difference between right and wrong; which mode, though rarely, if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put generally, and in the abstract, as when put with reference to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused, solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction; whereas the law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong; and this course we think is correct, accom-

panied with such observations and explanations as the circumstances of each particular case may require.

Question for jury.

Every man is presumed, etc.—This is a *praesumptio juris.* The question for the jury is, therefore, not whether the prisoner was of sound mind, but whether he has made out to their satisfaction that he was of unsound mind.[1]

Scope of answer.

A defence on the ground of insanity.—It will be observed that this answer is general, while the second question (*sup.*) relates to cases of "insane delusion respecting one or more particular subjects or persons" only. But see note to "inquiries," *ante* p. 895.

Burden of proof.

It must be clearly proved, i.e. by the prisoner.

Critical period.

Previous and subsequent insanity.

At the time.—Irresponsibility at the critical period must be established. But evidence of previous[2] and—in spite of *Hoby* v. *Hoby*[3]—probably also of subsequent, insanity, might be admissible. In support of a plea of insanity, evidence has been admitted that the grandfather of the accused had been insane after the hereditary character of this disease had been proved by medical testimony.[4]

"Disease of the mind." Source of immaterial.

From disease of the mind.—The incapacity must spring from mental disease. Mental disease resulting from intemperate or vicious habits is, however, sufficient for the purpose.

"Particular right and wrong" theory.

Reason for its adoption.

As not to know . . . doing.—The first point to be noticed in regard to this clause is that it establishes what has been called the "particular right and wrong" test of responsibility, which, although it is capable of being deduced from the charge of Mr. Justice Tracy in *Arnold's case* (*ante* p. 886), was first clearly enunciated by Chief-Justice Tindal on the trial of Macnaughton (*ante* p. 888). The reason which led to its adoption was the gradual perception by Judges that there are lunatics whose general notions as to the difference between right and wrong in the abstract are all that could be desired, but who are yet unable to appreciate the wrongness of the particular offences with which they are charged. As a man is tried for having committed a particular act, it is not unfair to adopt as a test of his responsibility his knowledge that *it* was wrong.

"Nature and quality" of act.

Meaning of "nature."

Meaning of "quality."

Nature and quality.—The interpretation of these terms has given rise to not a little divergence of opinion. They probably have different meanings, although the phrase "or if he did know it" suggests a contrary conclusion. The "nature" of the act may signify its physical character and consequences, *e.g.* the loading of a pistol and death as the result of its discharge. "Quality" probably signifies legal character.

Know.—In his article in the *Juridical Papers*[5] on the policy of maintaining the existing law as to the criminal responsibility of

[1] *Reg.* v. *Layton*, 1849, 4 Cox C.C. 149. And cp. *U.S.* v. *M'Glue*, 1851, 1 Curt. 1; *Reg.* v. *Stokes*, 1852, 3 C. & K. 185; *State* v. *De Rance*, 1882, 44 Am. R., N.S., 426.

[2] *Symes* v. *Green*, 1 Sw. & Tr. 401; *Reg.* v *Layton*, *ubi sup.*

[3] 1828, 1 Hagg. E.R. 146.

[4] *Reg.* v. *Ross Tucket*, 1844, 1 Cox C.C. 103; and see note *ante* p. 896.

[5] Vol. i. p. 67.

Sir James Stephen's views as to.

the insane, in his *History of the Criminal Law of England*,[1] and in several circuit cases,[2] Sir James Stephen propounded the doctrine that no man who was deprived by mental disease of the power of passing a rational judgment on the moral character of the act which he meant to do, *knew* its nature and quality within the intendment of this answer. "Suppose," said Sir James Stephen,[1] "that by reason of disease of the brain a man's mind is filled with delusions which, if true, would not justify or excuse his proposed act, but which in themselves are so wild and astonishing as to make it impossible for him to reason about them calmly, or to reason calmly on matters connected with them. Suppose too that the succession of insane thoughts of one kind and another is so rapid as to confuse him, and finally suppose that his will is so weakened by his disease that he is unequal to the effort of calm sustained thought upon any subject connected with his delusion, can he be said to know or have a capacity of knowing that the act which he proposes to do is wrong?"

Inconsistent with fourth answer, *post*.

It is obvious that the interpretation which Mr. Justice Stephen here puts upon the word *know* is inconsistent with the answer of the Judges to the fourth question (*post*), viz. that if a person under an insane delusion as to existing facts commits a crime, he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. It does not, however, seem to go so far as the same learned Judge does in his *Digest of the Criminal Law*, in which he contemplates the case of a person who is able to pass a rational judgment on the nature and quality of an offence, and yet is unable, from mental disease affecting the will, to refrain from doing it. If this is sound law, it involves the recognition of moral insanity as an exculpatory plea in criminal cases. The practice of the Bench offers no very consistent guide as to whether Sir James Stephen's view of the law is accepted or not. Sometimes the answers in Macnaughton's case are rigidly adhered to.[3] In spite of the liberality which is generally supposed to have characterised it, the summing up of Lord—then Baron—Bramwell in the case of *Dove* is an instance of this.[4]

Inability to refrain from act from mental disease affecting will.

Practice of Bench not consistent guide.

Reg. v. *William Dove.*

William Dove was tried at York on the Northern Circuit, before Baron Bramwell, for the murder of his wife by strychnine poisoning on 1st March 1856.[5] The fact of the murder was not very strenu-

[1] Vol. ii. p. 163.

[2] *Reg.* v. *Davies*, 1888, *Western Mail*, 15th March 1888; *Reg.* v. *Burt*, 1885, *Norfolk Chronicle and Gazette*, 10th November 1885.

[3] Cp. *Reg.* v. *Barton*, 1848, 3 Cox C.C. 275, where Parke, B., speaks of "an irresistible impulse co-existing with the full possession of reasoning powers" being no excuse for a crime. The want of motive for a crime, and its being committed under circumstances rendering detection inevitable are, however, important points for the consideration of a jury when coupled with evidence of insanity on any other particular point (*Reg.* v. *Layton*, 1849, 4 Cox C.C. 149).

[4] Cp. also as to Lord Bramwell's view, his evidence before the Capital Punishment Commission 1865, and the Homicide Law Amendment Commission 1874, and an article in the *Nineteenth Century* for 1885, in which he speaks of the existing law being right to demonstration.

[5] The best report of this case is in the *Leeds Mercury* for July 17th, 18th, 19th and 20th, 1856. Cp. *Times*, *ib.*;

ously denied by the defence, and was in any event abundantly proved by the prosecution, and the main issue in the case was whether the prisoner was legally accountable for the offence with which he was charged. The following passages from Baron Bramwell's charge to the jury will show how closely his lordship followed *Macnaughton's case*.

Lord Bramwell's charge.

"The rules of law are these: Every person at the age of discretion is, unless the contrary be proved, presumed to be sane, and to be accountable for his actions. The prisoner's counsel must establish the contrary of that presumption. To establish a defence on the ground of insanity it must be clearly proved that at the time of the committing of the act the party accused was labouring under such a defect of reason from disease of the mind as not to know the nature or quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong. If the accused was conscious of the act he did, he is punishable, and what you have to consider is, Had he a sufficient degree of sanity to know he was doing wrong? With respect to delusion the case is the same. According to the law as I lay it down to you on the highest authority, to exempt a man from the penal consequences of his act, the act being contrary to law, you must be of opinion that at the time he did the act, he was not conscious that the act was one which he ought not to do; for if he was conscious that the act was contrary to law, he is punishable. You must be satisfied that he had not a sufficient degree of reason to know that he was doing an act which was wrong. Of course that means doing an act prohibited by law, because a man might imagine that killing was a right thing to do, and it might be contrary to law. For instance, he might think it right to take from the rich and give to the poor, but if he did it not knowing it was wrong, he must not know that the thing which he so did was what the law will punish him for. If he does not know he is doing what is wrong, you are then bound to acquit him by your verdict on the ground of insanity."

Adoption of Sir James Stephen's views

Lord Blackburn.

On the other hand, Sir James Stephen's views have frequently received judicial sanction. Thus on one occasion Lord Blackburn (cp. Report of Select Committee on the Homicide Law Amendment Bill 1874, Ques. 276) told a jury that, the Rules in *Macnaughton's case* notwithstanding, there were "exceptional cases," and thus properly secured the acquittal of a poor woman who had already been the inmate of an asylum, and who on foreseeing a recurrence of her old symptoms attempted to kill her child in order that it might not be a burden to her husband while she was away. In *Brocklehurst's case* (Chester Assizes, Oct. 1884) Mr. Justice Cave, reverting to the language of Lord Kenyon on Hadfield's trial, said that the question for the jury was whether the prisoner was insane at the time; and more recently, on the trial of Duncan at Cardiff Assizes for the murder of his wife, Mr. Justice Lawrence added, as an alternative to the

Reg. v. *Brocklehurst.*

Stephen's *General View, etc.*, 173; and *Hist. Crim. Law*, vol. ii. 177; and Latham Browne and Stewart's *Trials for Murder by Poisoning.*

Reg. v. *Duncan.*

usual charge, the question "Was the prisoner *unable to control* his actions in consequence of a disordered mind?" Duncan was acquitted. On the whole, the latitudinarian school of judicial thought in regard to the interpretation of the answers in *Macnaughton's case* is now on the ascendant.[1]

American law as to Rules in *Macnaughton's case.*

The Rules in *Macnaughton's case*, in their literal interpretation, have been followed with more or less fidelity in very many of the American Courts.[2] But the modern trend of American judicial opinion appears to be distinctly adverse to them.[3]

"Wrong."

He was doing what was wrong.—The term "wrong" here means morally wrong. The first question put by the House of Lords (*v. sup.*) contemplates the case of an accused person who knows he is acting contrary to the law of the land.

Whether the accused . . . knew the difference between right and wrong.—This was the "right and wrong in the abstract" test of responsibility (*v. sup.*).

Manipulation of "right and wrong in abstract" theory.

Though rarely if ever, etc.—These words suggest that the "right and wrong in the abstract" theory had been "manipulated," just as the answers in *Macnaughton's case* themselves have been.

"Wrong" does not mean "prohibited by law."

Solely and exclusively with reference to the law of the land.—It might therefore appear that "wrong" means "prohibited by law." But this construction is inconsistent with (1) the fact, above noted, that the first question, which is the key to the whole interrogatories, deals with the case of a man who knows he is acting contrary to law, and (2) the statement (*infra*) "if the accused was conscious the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable." According to this answer, the reason why it is necessary not to charge the jury "solely and exclusively with reference to the law of the land" is lest they should regard *ignorantia juris* as a defence. The real objection to the "right and wrong in the abstract" theory is, however, of a very different character. It is that many lunatics—Hadfield and Mac-

[1] In America the fact of a defendant hiding himself (*People* v. *Barber*, 1889, 115 N.Y. 475), and an expression by a defendant of a determination to be "electrocuted" (*People* v. *Taylor*, 1893, 138 N.Y. 399), have been treated as evidence of knowledge of the nature of the act. On the other hand, the absence of motive for a crime (*State* v. *Spencer*, 1846, 1 Zab., at p. 209), and the atrocious character of an act (*Lares* v. *Commonwealth*, 1877, 84 Pa. St. 200) have been regarded as admissible as evidence of ignorance of its nature.

[2] Cp. *State* v. *Spencer*, 1846, 1 Zab. 196; *Willis* v. *People*, 1870, 33 N.Y. 715; *U.S.* v. *Holmes*, 1858, 1 Clif. 98; *U.S.* v. *Shults*, 1854, 6 Mack. 121; *People* v. *Hobson*, 1861, 17 Cal. 424; *People* v. *Coffman*, 1864, 24 *ib.* 230; *Freeman* v. *People*, 1847, 4 Den. 9; *Clark* v. *State*, 1843, 12 Ohio 483; *U.S.* v. *Guiteau*, 1883, 1 Mack. 498.

[3] Cp. *Commonwealth* v. *Rogers*, 1844, 7 Met. Mass. 500; *People* v. *Kleim*, 1845, 1 Edm. Sel. Ca. pp. 22-35; *Parsons* v. *State*, 1887, 81 Ala. 577; *State* v. *Johnson*, 1873, 40 Conn. 136; *Hopps* v. *People*, 1863, 31 Ill. 385; *Stevens* v. *State*, 1869, 31 Ind. 485; *Bradley* v. *State*, *ib.* 492; *State* v. *Felter*, 1868, 25 Io. 67; *People* v. *Finley*, 1878, 38 Mich. 482; *Ortwein* v. *Commonwealth*, 1874, 76 Pa. St. 414; *Brown* v. *Commonwealth*, 1875, 78 *ib.* 122. The high-water mark of the reaction against the Rules in *Macnaughton's case* appears to have been reached in *State* v. *Jones*, 1871, 50 N.H. 369, where it was laid down that no man is responsible for an act which was the product of mental disease. Cp. *State* v. *Richards*, 1872, 39 Conn. 591, where also Sir J. F. Stephen's interpretation of *Macnaughton's case* was followed.

naughton himself, for instance—*do* know the difference between right and wrong in the abstract, and yet do not know it "in respect to the very act with which" they are charged. It is very difficult to reconcile this answer with that to the first question.

Objection to "right and wrong in abstract" theory.

The act was one, etc.—The act must be illegal, and the accused must know it to be so, and also to be technically wrong.

The usual course.—A few lines *supra* the general course is said to have been to ask the jury whether the accused knew the difference between right and wrong.

Accompanied, etc.—It is in virtue of such terms as this that the Rules in *Macnaughton's case* have been manipulated.

Manipulation of Rules in *Macnaughton's case.*

Fourth, the answer which I have given to the first question is applicable to this.

Mr. Justice Maule's fourth answer.

See *supra.*

The fourth question which your Lordships have proposed to us is this: "If a person under an insane delusion as to existing facts commits an offence in consequence thereof, is he thereby excused?" To which question the answer must of course depend on the nature of the delusion; but, making the same assumption as we did before, namely, that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment.

The Judges' fourth answer.

Depend on the nature of the delusion.—These words appear to admit of two interpretations. The first is that a contrast is intended to be instituted between a partial delusion and a delusion tainting, as it were, every fibre of the mind. This construction derives some countenance both from the word "nature" and from the context "making

Meaning of words "depend on the nature," etc. Distinction between partial and general delusion.

Delusion sole, or not sole, note of insanity

the same assumption." The second and, it is submitted, correct rendering is that a distinction is here drawn between a person of whose insanity delusion is the only note, and one who is both subject to delusions and is *in other respects insane.*

Objection to their test.

As if the facts, etc.[1]—The vice of this test is, of course, that it first assumes a man to have a delusion in regard to a particular subject, and then sets up an external standard by which he is required and expected to reason sanely upon his delusion.[2] The answer, however, admits of tolerably easy manipulation, and is in practice regularly manipulated.[3]

Mr. Justice Maule's fifth answer.

Fifth, whether a question can be asked depends, not merely on the questions of fact raised on the record, but on the course of the cause at the time it is proposed to ask it; and the state of an inquiry as to the guilt of a person charged with a crime, and defended on the ground of insanity, may be such that such a question as either of those suggested is proper to be asked and answered, though the witness has never seen the person before the trial, and though he has been present and heard the witnesses; these circumstances, of his never having seen the person before and of his having been present at the trial not being necessarily sufficient, as it seems to me, to exclude the lawfulness of a question which is otherwise lawful, though I will not say that an inquiry might not be in such a state as that these circumstances should have such an effect.

Supposing there is nothing else in the state of the trial to make the questions suggested proper to be asked and answered, except that the witness had been present and heard the evidence, it is to be considered whether that is enough to sustain the question. In principle it is open to this objection, that, as the opinion of the witness is founded

[1] A similar rule has been adopted in some of the American States. Cp. *People* v. *Pine*, 1848, 2 Barb., at p. 571; *Taylor* v. *Commonwealth*, 1889, 105 Penn. St. 262.

[2] This objection is stated with great force by Dr. Henry Maudsley in his work *Responsibility in Mental Disease.*

[3] *E.g. Reg.* v. *Carter*, *Times*, 8th March 1894. The prisoner thought that the Queen was depriving him of his legal rights to certain titles and a sum of 70 millions, and threatened to shoot her. He was found guilty but insane, whereas according to the answer under consideration he ought to have been convicted.

on those conclusions of fact which he forms from the evidence, and as it does not appear what those conclusions are, it may be that the evidence he gives is on such an assumption of facts as makes it irrelevant to the inquiry. But such questions have been very frequently asked, and the evidence to which they are directed has been given, and has never, that I am aware of, been successfully objected to. Evidence, most clearly open to this objection, and on the admission of which the event of a most important trial probably turned, was received in the case of the *Queen* v. *Macnaughton*, tried at the Central Criminal Court in March last, before the Lord Chief-Justice, Mr. Justice Williams, and Mr. Justice Coleridge, in which counsel of the highest eminence were engaged on both sides; and I think the course and practice of receiving such evidence, confirmed by the very high authority of these Judges, who not only received it, but left it, as I understand, to the jury without any remark derogating from its weight, ought to be held to warrant its reception, notwithstanding the objection in principle to which it may be open. In cases even where the course of practice in criminal law has been unfavourable to parties accused, and entirely contrary to the most obvious principles of justice and humanity, as well as those of law, it has been held that such practice constituted the law, and could not be altered without the authority of Parliament.

Raison d'être of Mr. Justice Maule's fifth answer.

The course of the cause.—The *raison d'être* of this, as of Mr. Justice Maule's other answers, is to say as little as possible.

Evidence most clearly.—The evidence referred to is probably that of Dr. Forbes Winslow.[1]

The Judges' fifth answer.

The question lastly proposed by your Lordships is: "Can a medical man, conversant with the disease of insanity, who never saw the prisoner previously to the

[1] *Reg.* v. *Macnaughton*, 1843, 4 St. Tr., N.S., 923.

trial, but who was present during the whole trial and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious at the time of doing the act that he was acting contrary to law, or whether he was labouring under any and what delusion at the time?" In answer thereto, we state to your Lordships, that we think the medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide, and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But, where the facts are admitted, or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right.

"The circumstances supposed."

Under the circumstances supposed.—"The circumstances supposed" (*v.* question 5, *sup.*) are the case of a medical man "conversant with the disease of insanity, who never saw the prisoner previously, but who was present during the whole trial and the examination of all the witnesses."

Semble, witness to be competent need not be conversant.

Objection goes to credibility not competency.

It is probably not necessary to the competency of a medical witness that he should be "conversant with the disease of insanity," as it is necessary to the competency of an expert called to prove a foreign law that he should possess a theoretical or practical knowledge of that law.[1] Any objection on this score would in all likelihood be held to go to credibility and not to competency.[2]

[1] Cp. in *re Bonelli*, 1875, 1 P.D. 69, where Sir James Hannen refused, upon a point of Italian law, the evidence of an English barrister who had merely studied that law in this country.

[2] On the trial of Wm. Palmer for strychnia poisoning in 1856, when Mr. (afterwards Mr. Justice) Grove, one of the counsel for the prisoner, was proceeding to cross-examine a medical student who had assisted at the post-mortem on Cook, the murdered man, on the appearances caused by strychnine, Mr. Baron Alderson stopped him, saying: "When you have here all the medical men in England, you had better not put such questions to an undergraduate" (see *Times* report of trial). A hint of this sort would usually be found sufficient to prevent the examination of a medical witness unqualified to express an opinion on a question of insanity.

When expert may, *semble*, testify to sanity or insanity.

Martin v. *Johnston*.

A medical expert may, *semble*, testify to the sanity or insanity of a person at the time of a transaction which is the subject of judicial investigation, if (but apparently only if) it was his duty to ascertain the fact. Thus in *Martin* v. *Johnston*,[1] where the sanity of a testatrix was in issue, Dr. Mayo, the surviving medical attendant of an asylum in which she resided at the time of making her will, was allowed to state that she was sane on the day in question, and that her continuance under restraint was voluntary. But a written declaration signed by the witness and the other attendant physicians, all deceased, certifying the sanity of the testatrix at the date of execution was rejected on the ground that the examination was not made on an official visit, and that therefore the certificate was not an official act.

Weight to be attached to expert opinion.

The opinion of an expert is not binding on a judge or jury, and the weight to be attached to it depends upon its intrinsic worth.[2]

Experts formerly, *semble*, assessors.

Provision of Judicature Act as to.

As far back as the reign of Henry VII. the Courts appear to have been in the habit of summoning to their assistance, apparently as assessors, persons specially qualified to advise upon any scientific or technical question that had to be determined;[3] and by the 56th section of the Judicature Act 1873, the same right may be exercised by any Judge of the High Court in any cause or matter other than a criminal prosecution by the Crown. The scale of fees payable to a professional witness who attends a trial to give evidence *as to matters of fact* will be found in Taylor's *Medical Jurisprudence*.[4] The fees payable to an expert for evidence *as to matters of opinion* are subject for arrangement between the expert and the party requiring his attendance.

Fees of experts giving evidence as to—

Matters of fact;

Matters of opinion.

Obligation to give evidence on subpœna—

As to matters of fact;

As to matters of opinion.

A question frequently arises as to the obligation of an expert to attend and give evidence on his subpœna. *Quoad* matters of fact he is in no better position than any other witness, except that he is entitled to remuneration on a professional scale.[5] *Quoad* matters of opinion there is some slight authority for the view that he is not bound to obey the subpœna or liable to attachment for failure to do so.[6] On the other hand, the better opinion appears to be that he should obey the subpœna and apply at the trial and before giving evidence for a personal undertaking as to his remuneration from the party calling him, or his solicitor.[7]

Expert when may sue for costs and charges.

A medical expert may bring an action for his costs and charges against the party who has employed him, if the latter has *expressly*

[1] 1858, 1 F. & F. 122.

[2] Cp. *Lovatt* v. *Tribe*, 1862, 3 F. & F., at p. 11, per Erle, C.J.; *Hanbury* v. *Hanbury*, 1892, 8 Times L.R., at p. 560.

[3] 21 Hen. VII. pl. 20; Best's *Evidence*, 649 n. (*h*); and cp. *Buckley* v. *Rice Thomas*, 1 and 2 Ph. & M., Plowd. 124*a*.

[4] Vol. I. chap. i.

[5] To support an action for damages for failure to attend and give evidence on subpœna, the plaintiff must show that he has sustained some loss and damage by reason of the defendant's non-attendance (cp. *Crewe* v. *Field*, 1896, 12 Times L.R. 405).

[6] Cp. *Betts* v. *Clifford*, 1858, per Lord Campbell, C.J., cited by Taylor, *Medical Jurisprudence*, vol. i. p. 17.

[7] Cp. *Webb* v. *Page*, 1843, 1 C. & K. 23; *Maxsted* v. *Morris*, 1868, Taylor, *ubi sup.*, at p. 18. The statute 6 & 7 Vict. c. 82, secs. 5-7, contains provisions for enforcing the attendance of witnesses before Courts in different parts of the United Kingdom from those in which they reside.

Party requiring his evidence. Solicitor of such party.

contracted to pay him, and even in the absence of such a contract a jury might *infer* a promise to pay from the mere fact of attendance at the trial. No action for costs and charges will lie, however, against the solicitor of a litigant subpœnaing a witness unless upon an express and personal undertaking to pay.[1]

Fees of medical practitioners at coroners' inquests.

A legally qualified medical practitioner who has attended at a coroner's inquest, in obedience to a summons by the coroner, is entitled to the following remuneration:—

For attending to give evidence at any inquest whereat no post-mortem examination has been made by such practitioner, one guinea. For making (*under the direction of the coroner*) a post-mortem examination of the body of the deceased (*with or without an analysis of the contents of the stomach or intestines*), and for attending to give evidence thereon, two guineas. No such fee is payable, however, on an inquest upon a person who died in a county or other lunatic asylum to the medical officer whose duty it was to attend the deceased (Coroners Act 1887 (50 & 51 Vict. c. 71), sec. 22).

Medical witness allowed to read notes of examination.

It is not unusual for witnesses both for and against the prisoner to see him previously. A medical witness who has examined a prisoner previous to the trial has been allowed in examination in chief to refer to and read the notes which he made at the time,[2] and

Law as to notes used for purpose of refreshing memory.

a witness is permitted to refresh his memory by reference to anything so written, or written under his direction, at the time when the facts occurred or immediately thereafter, or at any other time when the facts were fresh in his memory, and he knew that the same were correctly stated in the writing. A witness may also testify from such writings, although he retains no recollection of the particular facts.[3] Any written evidence of this description is, of course, liable to be seen, and to be cross-examined upon by the adverse party.[4]

Latitude in practice.

In strictness.—Considerable latitude is, however, often given to experts, in practice, in this matter.

Why expert not allowed to state opinion of facts.

Be asked his opinion.—The law embodied in this answer was followed by Lord Campbell in *Bainbrigge* v. *Bainbrigge*.[5] The ground on which a medical witness cannot be asked his opinion on disputed facts is that their determination is for the jury. But if the facts are put to the witness hypothetically—e.g. *assuming so and so to be true*,—and sometimes even where this form is not adopted, no objection is taken to medical witnesses being asked to state what inferences they, as men of scientific knowledge, would draw from them.

Hypothetical form of question unobjectionable.

Where a plea of insanity is set up the prisoner's counsel has no

[1] Cp. *Lee* v. *Everest*, 1857, 2 H. & N., per Bramwell, B., at p. 292.

[2] *Reg.* v. *Duncan*, Cardiff Assizes, 1890.

[3] Such evidence is, however, merely admissible; its credibility is a question for the jury, and it will naturally be received with caution.

[4] Cp. Taylor on Evidence, where the authorities are collected; and New York Civil Code, sec. 1843. In Scotland medical and other scientific reports are lodged in process before the trial, and the expert witness reads them as part of his evidence. The reason for this rule is that they constitute not only in law, but in fact, the best evidence under the circumstances. Cp. Alison's *Criminal Law of Scotland*, pp. 340-42.

[5] 1849, 4 Cox C.C. 456; and cp. *Reg.* v. *Frances*, 1849, *ib.* 57; *Reg.* v. *Richards*, 1858, 1 F. & F. 87.

right in his address to the jury to quote the opinion of medical men as given in their works.[1]

Opinions of medical writers, how far admissible.

Medical works are not directly admissible in evidence, on the ground that if the authors of such treatises are living they ought to be called as witnesses, while, if they are dead, they cannot be cross-examined. On the other hand, an expert will be permitted, while explaining the reasons of his opinion, to state that it was partly formed on the writings of certain authors, and to refer to such writings.[2] An expert is, of course, liable to be cross-examined upon medical authorities whether he has referred to them in his examination in chief or not.

Reason why medical works not direct evidence.

Expert may refer to, as ground of opinion.

Conscious.—See *sup.* p. 896.

At the time.—See *sup.* p. 896.

Contrary to law.—See *sup.* p. 896.

Delusion.—See *sup.* p. 895.

Liable to be cross-examined on, in any case.

Moral insanity is a term which we may use as a convenient generic description, including all those cases in which the moral faculties are more obviously deranged than the mental. This type of insanity has had a curious history. It was first recognised by M. Philippe Pinel, to whom, so far as the Continent is concerned, we owe the movement for a reform in asylum administration. The observations of Pinel were enlarged and applied by Marc and Esquirol—the latter of whom at first doubted whether there was such an absence of any mental lesion as some of the other French alienists insisted upon—but ultimately accepted their theory; and the works of these writers were in turn naturalised in America and England, through the treatises of Ray, Prichard, and Conolly. It was long, however, before moral insanity met with any other than an uncompromisingly hostile reception in the Courts.[3] The explanation of this fact is to be sought not less in the novelty of the conception than in the extreme form in which it was originally presented in most of the accredited text-books as a disease in which the moral faculties alone were affected. Not only was the assumption that there was no injury to the mental faculties in such cases a negative incapable of proof, but it was disproved by the cases on which the early French and American alienists relied. These circumstances, together with the social mischief which a ready acceptance of a plea offering in many cases so convenient an excuse for mere depravity would have worked, account for and justify to a large extent the hostility with which moral insanity was regarded by the Judges. But as time went on and the sphere of scientific knowledge on the subject enlarged, the conclusion that in moral insanity the mental powers were not affected was practically abandoned. Clear evidence of a reaction against it is traceable in the writings of

Moral insanity. Sense in which term used.

History of its recognition.

Pinel.

Marc and Esquirol.

Ray, Prichard, and Conolly.

Legal opposition to.

Due to novelty of conception.

Extreme form of original presentation.

And social aspects.

Medical reaction against extreme form.

[1] *Reg.* v. *Crouch*, 1844, 1 Cox C.C. 94.

[2] Cp. *Collier* v. *Simpson*, 1831, 5 C. & P. 73.

[3] Cp. *Reg.* v. *Haynes*, 1859, 1 F. & F. 666, where it was also laid down that after the cases for the prosecution and the prisoner are closed the Judge should not, at the suggestion of counsel for the prosecution, examine a witness not before called; *Reg.* v. *Brough*, 1854 or 1856, cit. *ib.* 667 n. (*a*), and 2 F. & F. 838 n.; *Reg.* v. *Burton*, 1863, 3 F. & F. 772.

Trélat and Du Saulle.

Taylor.

Trélat (*La Folie lucide*) and Du Saulle (*La Folie devant les Tribunaux*), and probably there are few alienists at the present day who would refuse to accept the view of Dr. Taylor in his *Treatise on Medical Jurisprudence*.[1] "It does not seem probable that moral insanity . . . ever does or can exist in any person without greater or less disturbance of the intellectual faculties. The mental powers are rarely disordered without the moral feelings partaking of their disorder, and conversely it is not to be expected that the moral feelings should become to any extent perverted without the intellect being affected, for perversion of moral feeling is generally observed to be one of the early symptoms of disordered reason. The intellectual disturbance may sometimes be difficult of detection, but in every case of true insanity it is more or less present, and it would be a highly dangerous practice to pronounce a person insane when some evidence of its existence was not forthcoming."

Moral insanity in modern sense entitled to legal recognition.

Existence probable *a fortiori*.

And demonstrable.

Recognition of does not involve acquittal in every case.

Moral insanity, thus understood, is simply insanity in which disorder of the moral, as distinguished from the mental, powers is the prominent feature, and in this form it is clearly entitled to judicial recognition. *A fortiori* it is quite as probable that insanity may attack the emotions, the moral sense, and the will, as that it should attack the reason and the judgment, or, for that matter, should affect one of a man's faculties and leave the rest apparently unimpaired. And the existence of this species of insanity is established by an enormous body of evidence. Moreover, the recognition of moral insanity as a disease does not involve its acceptance as an exculpatory plea in every particular case. The responsibility of the morally insane must be determined by the question whether they were prevented by disease from understanding the nature and quality (in the large sense explained by the late Sir James Stephen, *ante* p. 899) of their acts, or for exercising control over their impulses.

Recognition of in America.

And in this country.

American Courts have repeatedly accepted a plea of moral insanity, thus defined;[2] and in this country, while it is not formally recognised, effect is sometimes given to it both by juries under judicial direction and by the executive. Reference may be made to the class of cases too familiar to need citation, where women commit infanticide shortly after their confinement,[3] and to acquittals or to the application of the doctrine of modified responsibility in cases of kleptomania.

Medical writers on moral insanity distinguish other species of the disease, *e.g.* pyromania, nymphomania, satyriasis, homicidal mania, and mania of persecution. But these ramifications cannot be discussed here.

The law as to suicide and life insurance is discussed *ante* p. 66.

[1] Vol. ii. p. 479.

[2] Cp. *Commonwealth* v. *Mosler*, 1846, 4 Pa. St. 266; *Forman's Will*, 1869, 54 Barb. 274; *Anderson* v. *The State*, 1876, 43 Conn. 515, *contra*; *State* v. *Spencer*, 1846, 1 Zab. 196. Moral insanity has been recognised in America, both where it obliterated the judgment (*Commonwealth* v. *Rogers*, 1844, 7 Metc. 500; *Cunningham* v. *The State*, 1879, 56 Miss. 269; and cp. *Reg.* v. *Barton*, 1848, 3 Cox C.C. 277) and where it merely subjugated the will (*Commonwealth* v. *Mosler*, 1846, 4 Pa. St. 264).

[3] *Reg.* v. *Law*, 1862, 2 F. & F. 836. Cp. *H.M. Advocate* v. *Middleby* or *Tierney*, 1875, 3 Coup., at p. 165.

Two other questions remain to be briefly considered—suicide as *felo de se*, and subsequent suicide as evidence of incapacity in regard to other independent acts. Suicide committed under the influence of mental disease obliterating knowledge of the nature and quality of the act is not *felo de se*.[1] The almost uniform verdict of "temporary insanity" in coroners' inquests has, however, rendered this test of little practical importance; and even attempted suicide is not infrequently judged in criminal courts by a standard scarcely less elastic than that by which the legal character of the *fait accompli* is determined. The laxity of juries in regard to this matter has in its favour the legal presumption of innocence from the crime of actual or attempted *felo de se*, and the fact that suicide is undoubtedly some evidence of insanity.[2] It is, moreover, a tradition formed in and descending from the times when the penalties of forfeiture were annexed to *felo de se*,[3] and kept alive by the family distress and social discredit still attaching to it. With reference to subsequent suicide as evidence of insanity, on the one hand it is clearly the law that where the validity of an act is in question[4] incapacity is not to be inferred from the *mere* fact of subsequent suicide; on the other hand, subsequent suicide is *relevant* evidence of previous insanity.[5]

Suicide.

(1) Suicide when not *felo de se*.

Reasons for laxity of juries.

(2) Subsequent suicide as evidence of insanity.

According to Coke,[6] a drunkard has no privilege in consequence of his state, "but what hurt or ill soever he doth his drunkennesse doth aggravate it."

Drunkenness.

Coke's view.

Hale[7] restated this proposition in a somewhat more accurate form, viz. that a person suffering from this voluntarily contracted madness "shall have the same judgment as if he were in his right senses," and admitted the existence of two "allays":

Hale's view.

Hale's "allays."

(1) "That if a person by the unskilfulness of his physicians, or by the contrivance of his enemies, eat or drink that which causeth a temporary frenzy, as *aconitum* or *nux vomica*, this puts him in the same condition in reference to crime as any other frenzy, and equally excuseth him." (2) "That although the *simplex* frenzy occasioned immediately by drunkenness excuse not in criminals, yet if by one or more practices an *habitual* or fixed frenzy be caused, though this madness was contracted by the vice and will of the party, yet this habitual or fixed frenzy thereby caused puts the man in the same condition in relation to crimes as if the same were contracted involuntarily at first."

(1) Temporary frenzy induced by unskilfulness of physician, etc.

(2) Habitual or fixed frenzy.

In *R.* v. *Grindley*,[8] Holroyd, J., said that drunkenness may

Drunkenness, query whether relevant to show absence of premeditation.

[1] Bac. Abr. *Felo de se* (A.)

[2] Cp. *R.* v. *Saloway*, 2 Jac. II., 3 Mod. 100; *Jones* v. *Consolidated Assurance Co.* 1858, 26 Beav. 256; *Jones* v. *White*, 4 Geo. I., 1 Str. 68.

[3] 1 East P.C. 390.

[4] *M'Adam* v. *Walker*, 1813, 1 Dow. P.C. 148 and 187 (where a marriage was declared valid although the husband committed suicide on the day of the marriage); and *Burrows* v. *Burrows*, 1827, 1 Hagg. E.R. 109 (where a will was upheld in the absence of evidence of insanity at the time of giving instructions for it, although the testator committed suicide three days afterwards); *Chambers* v. *Queen's Proctor*, 1840, 2 Curt. 415.

[5] *M'Adam* v. *Walker*, *ubi sup.*, per Eldon, L.C., at p. 179.

[6] Co. Litt. 247.

[7] Hale, P.C. 32.

[8] 1819, cit. 1 Russ. Crimes, 6th ed., p. 144.

properly be considered by a jury where the question is whether the prisoner's act was premeditated or not. This dictum was, however, disapproved of in *R.* v. *Carroll*;[1] and according to *R.* v. *Meakin*[2] would be peculiarly erroneous where a prisoner employed a dangerous or deadly weapon. On the other hand, it has received recognition in Scotland.[3]

Drunkenness may be very material to the question whether there was capacity to form a criminal intent.[4] The same principle holds good in the case of insanity. Thus in *Reg.* v. *Collins*, tried at the London County Sessions on 29th April 1895, the defendant, a medical dentist, was indicted for stealing at his club. The plea set up was not insanity, but a series of nervous headaches aggravated by influenza and the death of a near relation. Medical evidence was called, and it was urged that though the accused was not insane, his mind was to some extent affected, sufficiently so to remove any presumption of felonious intent. The jury were so far influenced by the evidence and arguments as to acquit. This line of defence falls within the category of defences on the ground of intoxication, and its success depends a good deal on the judge; but its utility is obvious in cases of kleptomania, or pointless pilferings by persons in easy circumstances, as an alternative to a plea of insanity with its painful attendant consequences of relegation to a criminal lunatic asylum.

Drunkenness may be considered where self-defence or provocation enters into case.

Drunkenness is a factor of which a jury may take account where a prisoner acted in self-defence[5] or under provocation,[6] and the question is whether the danger apprehended or the provocation was sufficient to justify his action or to alter its legal character.

Query whether continuous mental derangement necessary.

In *Rennie's case*[7] it was laid down that drunkenness is no excuse for crime unless the mental derangement resulting from it is fixed and continuous. But in *Reg.* v. *Baines*,[8] Mr. Justice Day dissented from this view, and said that it was immaterial whether the mental derangement was permanent or temporary, so long as it prevented the prisoner from knowing the nature and moral quality of his act.

Involuntary drunkenness resulting from temporarily diseased condition.

Involuntary drunkenness resulting from a temporarily diseased condition will exempt a prisoner from responsibility. Thus in *Reg.*

[1] 1835, 7 C. & P. 145.

[2] 1836, *ib.* 297. A distinction which makes the question whether drunkenness is relevant or not depend on the nature of the instrument used is somewhat difficult to maintain logically.

[3] Cp. *H.M. Advocate* v. *Dingwall*, 1867, 5 Irv. 479, and *H.M. Advocate* v. *Granger*, 1878, 16 Sc. Law Rep. 253, followed in *H.M. Advocate* v. *Smith*, 1893, 1 Adam 34, and *H.M. Advocate* v. *Abercrombie*, 1896, 33 S.L.R. 581; and cp. *H.M. Advocate* v. *Ferguson* 1894, *ib.* 522 (arrested mental development); *H.M. Advocate* v. *M'Donald*, 1890, 2 White 519; *H.M. Advocate* v. *Robertson or Brown*, 1886, 1 White 93.

[4] Cp. *Reg.* v. *Cruse*, 1838, 8 C. & P. 541; *Reg.* v. *Monkhouse*, 1849, 4 Cox C.C. 55; *Reg.* v. *Doherty*, 1887, 16 Cox C.C. 306; *Reg.* v. *Moore*, 1852, 3 C. & K. 319.

[5] Cp. *Reg.* v. *Gamlen*, 1858, 1 F. & F. 90.

[6] Cp. *Reg.* v. *Monkhouse*, 1849, 4 Cox C.C. 55; *R.* v. *Thomas*, 1837, 7 C. & P. 817; *Pearson's case*, 1835, 2 Lew. 144; *Burrow's case*, 1823, 1 Lew. 75; *Marshall's case*, 1830, 1 Lew. 76; *Goodier's case*, 1831, *ib.* n.

[7] 1825, 1 Lew. 76; and cp. *Reg.* v. *Davis*, 1881, 14 Cox C.C., per Stephen, J., at p. 564.

[8] *Times*, 25th Jan. 1886.

v. *Mary R.*[1] Palles, C.B., said: "If a person from any cause—say long watching, want of sleep, or depravation of blood—was reduced to such a condition that a smaller quantity of stimulant would make him drunk than would produce such a state if he were in health, then neither law nor common sense could hold him responsible for his acts, inasmuch as they were not voluntary but produced by disease." *Semble*, the same result would follow where insane predisposition was the proximate cause of the intoxication.[2]

Hypnotism.

The phenomena of hypnotism belong too largely to psychology, and there is not sufficient agreement among experts as to their legal relations, to render any discussion of them here expedient.

Controversy between schools of Liégois and Benedikt.

The careful student of the controversy between the school of Liégois, according to whom there is great danger of hypnotic subjects receiving and acting upon criminal suggestions, and that of Benedikt and others, who deny this danger altogether, may perhaps be disposed to adopt a *via media*. No doubt there is force in the staple criticism urged by the latter against the conclusions of the former, that it is one thing to induce subjects to commit imaginary and another thing to induce them to commit real crimes. But, on the other hand, this criticism postulates subjects who are normally under the government of moral principle, and it is difficult to deny the possibility of criminal suggestions being successfully made to persons who are not ordinarily controlled by the moral sanction at all. When, however, the question as to hypnotism and crime is definitely raised in this country, the law as to the criminal responsibility of the insane will be found adequate, with the necessary modifications and adjustments, to its solution.

Accessories.

Mr. Justice Kennedy's ruling in the *Plaistow murder case*,[3] "that the man Fox, charged with being an accessory after the fact, must be found not guilty if the boy Coombes were found to be insane at the time of the act, and therefore irresponsible," appears to be of very questionable soundness. The learned Judge supported his decision by the following train of reasoning: "If the boy was insane he could not be held responsible in law for the crime, and therefore Fox could not be convicted as an accessory after the fact to felony, for which, under the circumstances, the principal could not be held responsible." The answer to this argument is that a criminal act does not cease to be illegal because a particular person is excused on the ground of insanity from the penal consequences of having committed it. Under the Trial of Lunatics Act 1883 (*ante*) the verdict in such cases is now "Guilty, but insane," instead of the old verdict of "Not guilty on the ground of insanity." The change was made deliberately. On the motion for the second reading of this Bill the Attorney-General (Sir Henry James) explained that it had been thought advisable that some change should be made in the law with respect to the conviction of lunatics. As the law then stood, lunatics charged with crime were

[1] *Reg.* v. *Mary R.*, 1887, cit. *Kerr's Inebriety*, 2nd ed., p. 395.

[2] *Reg.* v. *Mountain*, April 1888, Leeds Assizes, per Pollock, B.

[3] 1895, *Reg.* v. *Coombes and Fox.*

found *not guilty on the ground of insanity;* and it had been wisely thought that people who were only partially mad at the time they formed the resolution to commit a crime *would be more deterred* from so doing if the verdict was one of guilty of committing the act charged. The result, he said, would be entirely the same after verdict taken, because insane prisoners would be detained at the pleasure of the Crown, as at that time. It had been thought better that this alteration of the law should be made, and there was no reason against it (Hansard's Debates, 3rd series, vol. 213, p. 922).

Rape.

The responsibility of insane persons for other offences than murder, *e.g.* arson, rape, etc., is governed by the Rules in *Macnaughton's case* (see *ante* p. 890).

Sexual connection with a lunatic is rape, if she is incapable of giving consent.[1] Consent proceeding from animal instinct is sufficient.[2] But see *ante* p. 685.

[1] *Reg.* v. *Fletcher*, 1859, Bell C.C. 63; *Reg.* v. *Barratt*, 1874, 43 L.J., N.S., M.C. 7.

[2] *Reg.* v. *Fletcher*, 1866, L.R., 1 C.C.R. 39.

PART III

APPENDIX

A

STATUTES

(1) DE PRAEROGATIVA REGIS, 17 Edw. II., st. 1., A.D. 1324

Act of 1890, s. 108, subs. (1).

Cap. IX.

Rex *habet* (habebit) custodiam terrarum fatuorum naturalium, capiendo exitus earundem sine vasto et destructione et inveniet eis necessaria sua de cujuscumque feodo terre ille fuerint; et post mortem eorum reddat *eas* (eam) rectis hæredibus ita quod nullatenus per eosdem fatuos alienentur *vel* (nec quod) eorum hæredes exheredentur.

The King shall have the custody of the lands of natural fools, taking the profits of them without waste or destruction, and shall find them their necessaries, of whose fee soever the lands be holden. And after the death of such idiots he shall render them to the right heirs; so that by such idiots no alienation shall be made, nor shall their heirs be disinherited.

17 Edw. II., st. 1.

Cap. X.

Item *habet providere* (Rex providebit) quando aliquis qui prius *habuit* (habuerit) memoriam et intellectum, non fuerit compos mentis suæ, sicut quidam sunt per lucida intervalla, quod terre et tenementa *eorundum* (ejusdem) salvo custodiantur sine vasto et destructione, et quod ipse et familia sua de exitibus eorundem vivant et sustineantur competenter; et residuum ultra sustentationem eorundem rationabilem custodiatur ad opus ipsorum liberandum *eis* (eisdem) quando memoriam recupaverint. Ita quod predicte terre et tenementa infra prædictum tempus *non* (nullatenus) alienentur nec Rex

de exitibus aliquid percipiat ad opus suum; et si obierit in tali statu tunc illud residuum distribuatur pro animâ ejusdem per consilium *ordinariorum* (ordinarii).

Also, the King shall provide when any (that beforetime hath had his wit and memory) happen to fail of his wit, as there are many having lucid intervals, that their lands and tenements shall be safely kept without waste and destruction, and that they and their household shall live and be maintained competently from the issues of the same; and the residue beyond their reasonable sustentation shall be kept to their use, to be delivered unto them when they recover their right mind; so that such lands and tenements shall in no wise within the time aforesaid be aliened; nor shall the King take anything to his own use. And if the party die in such estate, then the residue shall be distributed for his soul by the advice of the ordinary.

51 Geo. III. c. 37.

(2) MARRIAGE OF LUNATICS ACT 1811.[1]

51 Geo. III., c. 37.—An Act further to prevent the Marriage of Lunatics. [31st May 1811.]

Whereas an Act was made in the Parliament of Great Britain, in the fifteenth year of the reign of his late Majesty King George the Second, to prevent the marriage of lunatics: And whereas it is expedient that the provisions of the said Act should be extended to Ireland: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the expiration of ten days after the passing of this Act, in case any person who has been, or at any time hereafter shall be found a lunatic by any inquisition taken or to be taken by virtue of a commission under the Great Seal of Great Britain, or the Great Seal of Ireland respectively, or any lunatic or person under a phrenzy, whose person and estate by virtue of any Act of Parliament now or hereafter shall be committed to the care and custody of particular trustees, shall marry before he or she shall be declared of sane mind by the Lord High Chancellor of Great Britain or Ireland, or the Lord Keeper or Lords Commissioners of the Great Seal of Great Britain or Ireland for the time being, or such trustees as aforesaid, or the major part of them respectively, as

Persons found lunatic marrying before declared sane, marriage to be void.

[1] This short title is enacted by the Short Titles Act 1896 (59 & 60 Vict. c. 14). It will be observed that this statute applies to England as well as to Ireland. The marriage of lunatics so found is, therefore, still null and void notwithstanding the repeal of 15 Geo. II., c. 30, by the Statute Law Revision Act 1873 (see *ante* p. 17). The latest case in which the marriage of a lunatic so found was declared null (*re Tovey*) was decided some years prior to the Act of 1873. But the Act of 51 Geo. III. c. 37, is still in force in this country. This view is in consonance with the opinions and practical instructions of the Chancery Visitors.

the nature of the case shall require, every such marriage shall be and is hereby declared to be null and void to all intents and purposes whatsoever.

(3) LUNACY ACT 1891.

54 & 55 VICT. c. 65.—An Act to amend the Lunacy Act 1890. [5th August 1891.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Sec. 1.

Short title. 53 & 54 Vict. c. 5.

1. This Act may be cited as the Lunacy Act 1891, and this Act shall be construed as one with the Lunacy Act 1890 (in this Act called the principal Act), and this Act and the principal Act may be cited together as the Lunacy Acts 1890 and 1891.[1]

Provisions as to relieving officers.

2. (1) A constable, relieving officer, or overseer whose duty it is, under the principal Act, to convey a lunatic to or from an institution for lunatics, may make proper arrangements for the performance of the duty by some other person or persons.[2]

(2) Where in a union there are two or more relieving officers, and the guardians, with the sanction of the Local Government Board, direct one relieving officer to discharge throughout the union the duties of a relieving officer in respect of lunatics, every other relieving officer in the union shall inform the officer so directed of any case of a lunatic, with which it would otherwise devolve upon such other relieving officer to deal, and it shall be the duty of the relieving officer receiving such information to deal with the case, and the other relieving officer shall be discharged from any further duty in the matter.[3]

Classification of lunatics received under ss. 13, 16 of principal Act.

3. A lunatic sent to an institution for lunatics under section thirteen or sixteen of the principal Act shall be classified as a pauper, until it is ascertained that he is entitled to be classified as a private patient.[4]

Amendments of 53 & 54 Vict. c. 5, s. 24.

30 & 31 Vict. c. 106.

4. (1) Every pauper suffering from mental disease in a workhouse at the commencement of the principal Act, as to whom a report had before the commencement of the principal Act been made under section twenty-two of the Poor Law Amendment Act 1867, may be detained in the workhouse against his will without an order under section twenty-four of the principal Act.[5]

(2) The medical superintendent of an asylum provided under the Metropolitan Poor Act 1867, shall not be required in any certificate

30 Vict. c. 6.

[1] See *ante* p. 69. [2] See *ante* p. 125. [3] See *ante* p. 120.
[4] See *ante* pp. 126, 132. [5] See *ante* p. 149.

Sec. 5.

under subsection one of section twenty-four of the principal Act, or under this Act, to certify to the effect in sub-clause (*c*) of that subsection mentioned, and upon the transfer from a workhouse to an asylum provided under the Metropolitan Poor Act 1867 of a lunatic, with regard to whom a certificate or order under the said section twenty-four made while he was in the workhouse is in force, no further certificate or order shall be required for the detention of the lunatic in the asylum.[1]

Medical certificates.

5. There shall be attached to every order made by a justice under section twenty-four of the principal Act the medical certificates on which such order is founded.[2]

s. 27.

6. Where a workhouse is situate in a county which does not include the union to which the workhouse belongs, a summary reception order made by a justice of the county in which the workhouse is situate may order a lunatic in the workhouse to be received in any asylum, in which pauper lunatics chargeable to the union, to which the workhouse belongs, may legally be received.[3]

s. 38, subs. (4).

7. Subsection four of section thirty-eight of the principal Act is hereby repealed, and the following subsection is substituted therefor :—

(4) A reception order shall remain in force for a year after the date by this Act or by an order of the Commissioners appointed for it to expire, and thereafter for two years, and thereafter for three years, and after the end of such periods of one, two, and three years for successive periods of five years, if not more than one month nor less than seven days before the expiration of the period at the end of which, as fixed by this Act or by an order of the Commissioners under subsection two, the order would expire, and of each subsequent period of one, two, three, and five years respectively, a special report of the medical officer of the institution or of the medical attendant of the single patient as to the mental and bodily condition of the patient with a certificate under his hand certifying that the patient is still of unsound mind and a proper person to be detained under care and treatment is sent to the Commissioners.[4]

s. 39.

8. Section thirty-nine of the principal Act shall not apply to lunatics received under a removal order or to lunatics so found by inquisition.[5]

s. 55.

9. (1) In subsection three (*a*) of section fifty-five of the principal Act the words "or to travel in England" shall be inserted after the word "place."[6]

(2) In subsection six of section fifty-five of the principal Act, for the words "licensed by visitors" shall be substituted the words "licensed by justices," and for the words "the Commissioners or

[1] See *ante* p. 149.
[2] See *ante* p. 155.
[3] See *ante* p. 160.
[4] See *ante* p. 181.
[5] See *ante* p. 192.
[6] See *ante* p. 217.

visitors" shall be substituted the words "such Commissioner or such two visitors."[1] Sec. 10.

10. In subsection three of section fifty-six of the principal Act the words "or permit the patient to be absent upon trial for such period as may be thought fit" shall be added after the word "health" at the end of the subsection.[2] s. 56, subs. (3).

11. In subsection one of section sixty-one of the principal Act the words "to the workhouse of the union to which the lunatic is chargeable, or if the lunatic is chargeable to a county or borough, to the workhouse of the union from which he was sent to the hospital or licensed house" shall be inserted after the words "of the lunatic."[3] s. 61, subs. (1).

12. The managing committee of every hospital may, with the approval of a Secretary of State, alter the regulations of the hospital.[4] Hospitals may alter regulations.

13. (1) Where under section two hundred and forty-six of the principal Act, a borough ceases to be a local authority under that Act, the borough shall for all purposes of that Act be annexed to and treated as part of the county in which the borough is situate, and if or so far as the borough has not contributed towards the expense of providing the asylum of the county, a sum to be paid by the borough towards the expenses already incurred in providing the asylum shall be fixed by agreement between the councils of the county and borough, or in default of agreement by an arbitrator appointed by the parties, or, if the parties cannot agree upon an arbitrator, by an arbitrator appointed by the Local Government Board. In fixing the sum to be paid by the borough, the borough shall be credited with any sums already contributed by the borough for lunacy purposes in excess of its legal liability; and the arbitrator shall take into consideration the amounts that may have been paid by the borough for the reception or maintenance, in the asylum of the county, of the lunatics of the borough.[5] Boroughs annexed to counties under s. 246 to contribute to expense of asylum.

(2) Where a borough had before the passing of this Act, by virtue of section eighty-six of the Local Government Act 1888, and the determination of any contract, become liable to contribute to the county rate of the county in respect of a lunatic asylum, this section shall apply to such borough as if it had immediately after the passing of this Act ceased under section two hundred and forty-six of the principal Act, to be a local authority.[6] 51 & 52 Vict. c. 41.

14. Any question relating to lunatic asylums or the maintenance of lunatics arising between any local authorities under the principal Act and any boroughs not being local authorities under that Act, and any visiting committees or any two or more of such parties respectively, may be referred to an arbitrator appointed by the Power to refer questions as to asylums to the Court or to arbitration.

[1] See *ante* p. 219.
[2] See *ante* p. 222.
[3] See *ante* p. 229.
[4] See *ante* p. 566.
[5] See *ante* p. 583.
[6] See *ante* p. 584.

Sec. 15.

parties, or, if the parties cannot agree upon an arbitrator, by the Local Government Board.[1]

s. 62 of 51 & 52 Vict. c. 41, applied.

15. The provisions of subsections five, six, and seven of section sixty-two of the Local Government Act 1888 shall apply to every sum by virtue of this Act agreed to be paid or awarded by an arbitrator as if such sum had been agreed to be paid or awarded under section sixty-two of the Local Government Act 1888.[2]

Amendment of s. 254 of 53 & 54 Vict. c. 5.

16. In subsection two of section two hundred and fifty-four of the principal Act, there shall be added after the word "contracts" the words "for the purchase of lands and buildings and for the erection, restoration, and enlargement of buildings."[3]

Contracts by town councils and the subscribers to a hospital.

17. Where a contract between the council of a borough and the subscribers to a hospital for the reception of pauper lunatics into the hospital was subsisting on the twenty-sixth day of August one thousand eight hundred and eighty-nine, such contract, unless determined by the parties or one of them, shall be deemed to have continued in force since that date, and may be renewed subject to the same conditions and with the same consequences as if the contract had been entered into by a visiting committee on behalf of the borough.[4]

Accounts of county asylums.

18. The provisions of the Local Government Act 1888, relating to the accounts of county councils and their officers, and to the audit of such accounts, shall apply to the accounts of every asylum belonging wholly or in part to a county council and of the visiting committee and officers thereof.[5]

Removal of lunatic becoming a pauper.

19. (1) Where a lunatic in a hospital or licensed house becomes a pauper, the manager of the hospital or house may, after having given notice to the authority liable for the maintenance of the lunatic of his intention so to do, apply to a justice of the peace having jurisdiction in the place where the hospital or house is situate for an order for the removal of the lunatic, and such justice may, if he thinks fit, make an order for the removal of the lunatic to an institution for lunatics to which pauper lunatics for whose maintenance the authority is liable may legally be sent, and for the reception of the lunatic therein, and such institution shall be named in the order, and the manager of the hospital or house shall forthwith cause the lunatic to be removed to the institution named in the order. In the case of such removal the original reception order shall remain in force, and shall authorise the classification of the lunatic as a pauper lunatic in the institution to which he is removed.[6]

(2) The costs of obtaining an order under this section and of the removal of the lunatic shall be repaid to the manager who obtains the order by the authority liable for the maintenance of the lunatic,

[1] See *ante* p. 580.
[2] See *ante* p. 581.
[3] See *ante* p. 590.
[4] See *ante* p. 606.
[5] See *ante* p. 624.
[6] See *ante* p. 160.

and any justice having jurisdiction in the place where the hospital or house from which the lunatic was removed is situate, shall have power to fix the amount of such costs and to order such authority to repay the same. The provisions of section three hundred and fourteen of the principal Act shall apply to every such order for the repayment of costs.[1]

Notice of reception of boarders into licensed houses and hospitals.

20. Where a boarder is received into a licensed house not within the immediate jurisdiction of the Commissioners in Lunacy, or into a registered hospital, notice of his reception shall be given to the Commissioners in Lunacy within twenty-four hours of his reception by the manager of the licensed house or hospital into which such boarder has been received.

If any manager fails to comply with the provisions of this section he shall, for each day or part of a day during which the default continues, be liable to a penalty not exceeding five pounds.

If the Commissioners after inquiry are of opinion that the mental state of any boarder received into a licensed house or hospital is such as to render him unfit to remain as a boarder, they may order the manager of the licensed house or hospital either to remove such boarder or to take steps to obtain an order for his reception as a patient into the licensed house or hospital.

Any manager failing to comply with an order of the Commissioners in Lunacy made pursuant to this section shall, for each day during which the default continues, be liable to a penalty not exceeding five pounds.[2]

Complaints as to control of patients.

21. If complaints are made by persons resident in the neighbourhood of any hospital that the patients are allowed to go outside the hospital without a sufficient number of officers to control them, or that the patients are allowed to wander at large without any control, the Commissioners may, if they are satisfied that there are primâ facie grounds for such complaints, inquire into the same, and may make such order in relation thereto as the Commissioners think just, and the superintendent of any hospital disobeying any such order shall be guilty of a misdemeanour.[3]

Payment of expenses as to lunatics becoming paupers.

22. The provisions of the principal Act for the payment of expenses in relation to pauper lunatics shall be applicable with respect to lunatics in institutions for lunatics who become paupers.[4]

Form of petition amended.

23. In Form 1 in the Second Schedule to the principal Act there shall be substituted for the word "Dated" the words "Date of presentation of the petition."[5]

Amendment as to judicial authority under 53 & 54 Vict. c. 5.

24. (1) A justice of the peace specially appointed under section ten of the principal Act may exercise the powers of the judicial

[1] See *ante* p. 161.
[2] See *ante* p. 560.
[3] See *ante* p. 568.
[4] See *ante* pp. 635, 647.
[5] See *ante* p. 723.

Sec. 24 (1)-(5).

authority under that Act, notwithstanding that he may not have jurisdiction in the place where the lunatic or alleged lunatic is.[1]

(2) A judicial authority may, if he considers it expedient, transfer a petition for a reception order presented to him to any other judicial authority who is willing to receive the same, whether such other judicial authority has or has not jurisdiction in the place where the lunatic is, and such other judicial authority shall have the same powers as the judicial authority to whom the petition was presented would have had.[2]

(3) A reception order made after the passing of this Act shall not be invalid on the ground only that the justice of the peace who signed the order shall appear to have not been duly appointed under section ten of the principal Act, if the order is within fourteen days after its date approved and signed by a judicial authority.[3]

(4) The appointment at any time before or after the passing of this Act by the justices of a county or quarter sessions borough of justices to exercise the powers of the judicial authority under the principal Act shall not be invalid on the ground only that the appointment includes all the justices of the county or borough.[4]

(5) Every justice appointed under section ten of the Lunacy Acts Amendment Act 1889 shall be deemed to have had power to exercise the jurisdiction conferred upon the judicial authority under the principal Act, and the jurisdiction of such justices and of any justices appointed or hereafter to be appointed under the principal Act shall be deemed to have continued and shall continue until a fresh appointment is made.[5]

Power to confer powers of justice of the peace on member of board of guardians.

25. If for the due administration of the Lunacy Acts 1890 and 1891 in any union it appears to the Lord Chancellor desirable, he may by writing under his hand empower the chairman of the board of guardians to sign orders for the reception of persons as pauper lunatics in institutions for lunatics, and every order so signed shall have effect as if made by a justice of the peace under the principal Act.[6]

Amendments in procedure upon inquisitions.

26. (1) The provisions of section ninety-four, subsection two of the principal Act as to the trial of issues in the High Court shall extend to all inquisitions, and the Masters may, for the purpose of inquisitions held before them, exercise the powers by that subsection conferred upon the judge who tries the issue.[7]

(2) The Masters may make orders for the attendance of an alleged lunatic at such time and place as the order directs, for examination by the Masters or a medical practitioner, and such order may be enforced in the same way as an order of a Judge of the High Court.[8]

Procedure as to Chancery lunatics.

27. (1) Subject to rules in lunacy the jurisdiction of the Judge

[1] See *ante* p. 111.
[2] See *ante* p. 112.
[3] See *ante* p. 112.
[4] See *ante* p. 113.
[5] See *ante* p. 113.
[6] See *ante* p. 113.
[7] See *ante* p. 294.
[8] See *ante* p. 295.

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in Lunacy as regards administration and management may be exercised by the Masters, and every order of a Master in that behalf shall take effect unless annulled or varied by the Judge in Lunacy.[1]

(2) The power to make rules under section three hundred and thirty-eight, subsection (2) of the principal Act shall extend to all applications under the principal Act and this Act, and also to applications in the Chancery Division of the High Court in cases where such applications are also made under the principal Act.[2]

(3) The power conferred by section one hundred and forty-eight of the principal Act to make rules fixing percentage and fees shall be deemed to extend to all proceedings under the principal Act or this Act, whether relating to lunatics so found by inquisition or to any other person in relation to whom or to whose property an order under the said Acts has been or may be made. Provided that in the case of lunatics under the protection of the Judge in Lunacy by virtue of the transmission of the record of an inquisition from Ireland and its entry of record in the High Court, and in the case of persons residing out of England and declared lunatic according to the laws of their place of residence, no percentage shall be levied except upon income arising from property within the jurisdiction of the Judge in Lunacy and administered under his direction.[3]

(4) The provisions of section one hundred and sixteen, subsection two of the principal Act shall apply to the persons named in subsection one (*d*) of the same section though not lunatics.[4]

Definition of "seised" and "possessed."

28. In the principal Act, the word "seised" shall include any vested estate for life or of a greater description, and shall extend to estates at law and in equity in possession or in futurity in any lands; and the word "possessed" shall include any vested estate less than a life estate at law or in equity in possession or in expectancy in any lands.[5]

Repeal.

29. The enactments in the Schedule are hereby repealed.

[1] See *ante* p. 334.
[2] See *ante* p. 706.
[3] See *ante* p. 465.
[4] See *ante* p. 398.
[5] See *ante* p. 451.

[SCHEDULE

THE SCHEDULE.

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ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
53 & 54 Vict. c. 5	The Lunacy Act 1890	Section nine, subsection one, from "having" to the end of the subsection. Section ten, in subsection one the words "within the county and borough respectively," and in subsection four the words "within the same" occurring twice. Section thirteen, subsection two, from "within" to "jurisdiction." Section twenty-four, subsection six, from "that a pauper" to "asylum" where that word next occurs. Section sixty-two. Section ninety-nine, the words "with a jury."[1] Section one hundred and forty-nine. Section two hundred and forty-six, from "subject" to "an asylum." Section two hundred and seventy-nine. Section three hundred and thirty-eight, subsection two, the words "in lunacy." The Second Schedule, Form 13. The Fourth Schedule, the references to "Dover" and "Maidstone" repealed as from the commencement of the Lunacy Act 1890.

[1] See *ante* p. 303.

(4) LANCASHIRE COUNTY (LUNATIC ASYLUMS AND OTHER POWERS) ACT 1891.

(54 Vict. c. xx.)

An Act to constitute a Lunatic Asylums Board for the County Palatine of Lancaster, and to transfer the existing County Pauper Lunatic Asylums to such Board, to repeal the Lancaster Annual General Sessions Act, and for other purposes. [11th May 1891.]

Part I.—Preliminary.

Sec. 1.

Short title and commencement.

1. This Act may be cited as the Lancashire County (Lunatic Asylums and other Powers) Act 1891, and shall (save as is otherwise expressly provided) come into operation on the first day of November one thousand eight hundred and ninety-one, which date is hereinafter referred to as the commencement of this Act.

Save as is otherwise.—See secs. 15 (transfer of existing county lunatic asylums to Board), 16 (saving for contracts, deeds, mortgages), 17 (actions not to abate), *post.*

Interpretation of terms.

2. In this Act, unless the context otherwise requires—

"Existing" means existing at the date of the commencement of this Act:

"Entire county" means the administrative county of Lancaster as constituted by the Local Government Act 1888, together with the county boroughs named in the First Schedule to this Act:

"County" means the administrative county of Lancaster as constituted by the Local Government Act 1888:

"County council" means the county council of the said administrative county:

"County boroughs" means the boroughs named in the First Schedule to this Act.

Existing.—The term is used in connection with the four pauper lunatic asylums referred to in the preamble, namely, the Lancaster Asylum at Lancaster, the Whittingham Asylum near Preston, the Rainhill Asylum near Liverpool, and the Prestwich Asylum near Manchester, and also with reference to officers and servants in sec. 14, *post.*

At the date of.—Viz. on 1st November 1891.

As constituted.—See sec. 46, subs. (5), and sec. 47 of the Local Government Act 1888.

The First Schedule—post.

Part II.—Lunatic Asylums Board.

Establishment of Asylums Board.

Constitution of Board.

3. There shall be in and for the entire county a lunatic asylums board constituted of thirty-eight representatives of the county, and of forty-nine representatives of the county boroughs.

Sec. 4 (1), (2).

Entire county.—For definition of, see sec. 2, *ante.*

Board constituted, etc.—As to the proportions of the 49 representatives to be elected by each borough, see First Schedule, *post.*

The county boroughs.—See First Schedule, *post.*

Incorporation of Board.

4. (1) The Board thus constituted shall be a body corporate by the name of the Lancashire Asylums Board (in this Act called "the Board") with perpetual succession and a common seal and with power to hold land for the purposes of their constitution without any licence in mortmain and to dispose of land.

Shall be a body corporate.—Under sec. 79, subs. (1) of the Local Government Act 1888 a county council is a body corporate. A visiting committee appointed under the Lunacy Act 1890 is not.

(Acts, etc., of Board during vacancy.)

(2) No act or proceeding of the Board or of any committee appointed by the Board shall be questioned on account of any vacancy in their body.

No act, etc.—For corresponding provisions as to visiting committees, see sec. 171, subs. (2), and sec. 175 of the Act of 1890, *ante.*

To constitute a Board meeting there must, however, be a quorum of 15 members present (see r. 5, Second Schedule, *post*).

Annual election of members.

5. (1) The county council at their quarterly meeting in November in the year one thousand eight hundred and ninety-one and in every subsequent year shall elect thirty-eight of their body to be members of the Board.

The county council.—See definition of, sec. 2, *ante.*

Their quarterly meeting.—As to, see sec. 75 of the Local Government Act 1888, and r. 2 of the Second Schedule of the Municipal Corporations Act 1882 (45 & 46 Vict. c. 50).

Elect thirty-eight.—See sec. 3, *ante.* As to elections by county boroughs, see subs. (2), *inf.* As to power to alter the number of members of the Board, see sec. 35, *post.*

(Elections by county boroughs.)

(2) The council of each of the county boroughs at their quarterly meeting in November one thousand eight hundred and ninety-one and in every subsequent year shall elect the number of persons (who may or may not be members of the council) specified opposite to the name of their borough in the First Schedule to this Act to be members of the Board.

See notes to subs. (1), *sup.*

First Schedule.—See *post.*

(Return of elections by town clerk.)

(3) The town clerk of each county borough shall return the names of the members elected by his council in the case of the first election to the clerk of the county council, and in the case of subsequent elections the names of the members elected shall be returned to the clerk of the Board by the clerk of the county council and the town clerks respectively.

Sec. 5 (4).

Shall return.—No time is prescribed within which the return must be made nor is any specific penalty attached to default. *Aliter*, under sec. 29, subss. (4), (5), and sec. 32, *post.*

Semble, the return must be made within a reasonable time.

County council.—For definition of, see sec. 2, *ante.*

(Duration of office.)

(4) Members of the Board shall come into office on their election, and shall hold office until the next ensuing election, and shall be re-eligible.

The Board.—See secs. 3 and 4, *ante.*

Shall hold office.—Under the Lunacy Acts 1890-91, a visiting committee hold office until the first meeting of their successors (see sec. 172, subs. (1), *ante*).

Members not to be interested in contracts, etc.

6. A member of the Board shall not be interested either in his own name or in the name of any other person in any contract entered into or work done for the Board, and shall not derive any profit or emolument whatsoever from the funds of the county lunatic asylums.

This provision shall not extend to any interest which a member of the Board may have by reason of his being a shareholder of a company which has entered into any contract with or done any work for the Board, but he shall not vote in respect of any such contract or work.

A member . . . asylums.—This clause re-enacts sec. 174, subs. (1) of the Act of 1890, *ante.*

This provision . . . work.—This clause re-enacts sec. 174, subs. (2) of the Act of 1890, *ante.* As to construction of this section, see Rogers on Elections, 17th ed. Part III. pp. 8-10.

Disqualification of member.

7. A member of the Board elected by the county council who ceases to be a member of the county council ceases thereupon to be a member of the Board.

The Board.—See sec. 3, *ante.*

Elected by.—As to elections by county council, see sec. 5, subs. (1), *ante.*

County council.—For definition of, see sec. 2, *ante.*

Ceases to be.—As to disqualification, etc., for office of county councillor, see Rogers on Elections, 17th ed. Part III. pp. 3, 6, 18. Under the County Councils (Elections) Act 1891 (54 & 55 Vict. c. 68), sec. 1, subs. (2), on the 8th day of March in every third year the county councillors then in office retire together, and their places are filled by the newly-elected councillors who come into office on that day. Query whether vacancies occurring in this way can properly be filled up under sec. 9, *inf.* They are periodical, not casual, and the words "or otherwise" both are confined to *casual* vacancies, and must be taken *ejusdem generis.*

Resignation of member.

8. A member of the Board may resign his office by notifying in writing his intention so to do to the chairman or clerk of the Board for the time being.

A member.—If elected by the county council. *Semble* (see sec. 7, *sup.*), that resignation by a member of his office of county councillor would, *ipso*

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facto, and without the notice required by this section, disqualify him for being a member of the Board.

The Board.—See sec. 3, *ante*.

The chairman.—See sec. 10, *inf.*

Casual vacancies.

9. Any casual vacancy in the Board occurring by death, resignation, or otherwise shall be filled up by the council by whom the vacating member was originally chosen as soon as reasonably practicable after the occurrence of the vacancy, but a member so chosen shall retain his office so long only as the vacating member would have retained the same if no vacancy had occurred.

Casual vacancy.—See note to "ceases to be" in sec. 7, *sup.*

The Board.—See sec. 3, *ante*.

Resignation.—See sec. 8, *sup.*

The council by whom.—See sec. 5, subss. (1) and (2), *sup.*

Only so long.—See sec. 5, subs. (4), *sup.*

Chairman and vice-chairman.

10. At their first meeting and subsequently at their annual meeting in November in each year the Board shall appoint one of their number to be chairman and another to be vice-chairman of the Board for the ensuing year.

At their annual meeting.—*Semble*, the chairman must be appointed at the annual meeting.

The Board.—See sec. 3, *ante*.

Chairman.—As to absence of chairman and vice-chairman, see r. 5, Second Schedule, *post.*

Meetings and proceedings of Board.

11. Meetings of the Board shall be held and the proceedings thereat shall be conducted in accordance with the rules as to meetings and proceedings contained in the Second Schedule to this Act.

The Second Schedule.—See *post.*

Minutes of proceedings, etc.

12. (1) A minute of proceedings at a meeting of the Board or of a committee signed at the same or at the next ensuing meeting by any person describing himself as or appearing to be chairman of the meeting at which the minute is signed shall be received in evidence without further proof.

A minute.—Cp. notes to sec. 175, subs. (1) of the Lunacy Act 1890, *ante.*

A meeting of the Board.—See sec. 11, *sup.*; and as to Board, sec. 3, *ante.*

A committee.—See sec. 13, *post.*

Chairman.—See sec. 10, *ante*; or vice-chairman, r. 5, Second Schedule.

Without further proof.—*Semble*, this does not mean that the minute shall be conclusive evidence, but only that it shall be received in evidence without further evidence being required.[1] It may, however, be impugned (see subs. (2), *inf.*)

(2) Until the contrary is proved, every meeting of the Board or of a committee whereof a minute has been so made shall be deemed to have been duly convened and held, and all the members of the

[1] Cp. *Hewitt* v. *Taylor*, 1896, 12 Times L.R., at p. 192.

meeting shall be deemed to have been duly qualified; and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes. Sec. 12 (2).

See notes to subs. (1).

Until the contrary.—See subs. (1), note to "without further proof."

Every meeting.—See sec. 11, *sup.*, and rules in Second Schedule, *post.*

The Board.—See sec. 3, *sup.*

A committee.—See sec. 13, *inf.*

Shall be deemed, i.e. shall be taken *primâ facie* to be. As to use of phrase "shall be deemed," see *ante* p. 138.

Duly convened.—See rr. 2 and 3, Second Schedule, *post.*

Held.—See r. 4, Second Schedule, *post.*

Duly qualified.—See sec. 7, *sup.*

Duly constituted.—See sec. 13, *inf.*

13. (1) At their first meeting and subsequently at their annual meeting in November in each year the Board shall appoint a visiting committee of not less than eleven members for every asylum, and may delegate to each committee such powers and duties of the Board as the Board from time to time think fit. The following sections of the Lunacy Act 1890 shall apply to each visiting committee (that is to say):— Visiting and other committees.

Section one hundred and seventy-one (Vacancies to be filled up):

Section one hundred and seventy-two (Duration of office):

Section one hundred and seventy-three (Examination of accounts):

Section one hundred and seventy-four (Members of visiting committee not to be interested):

Section one hundred and seventy-five, except paragraph (1) (Meetings of visiting committee):

Section one hundred and seventy-six (Clerk to visiting committee).

At their first meeting.—Cp. sec. 169, subs. (3) of the Lunacy Act 1890, *ante.*

The Board.—See sec. 3, *ante.*

Every asylum.—As to these, see note to sec. 2, *ante.*

Section one hundred and seventy-one—*ante.*

Section one hundred and seventy-two—*ante.*

Section one hundred and seventy-three—*ante.*

Section one hundred and seventy-four—*ante.*

Section one hundred and seventy-five—*ante.*

Section one hundred and seventy-six—*ante.*

(2) A visiting committee may appoint sub-committees and may delegate to any sub-committee such powers and duties as they think fit, and may make regulations for the guidance of any sub-committee. (Sub-committees.)

See notes to subs. (1).

May appoint, etc.—A sub-committee appointed under statutory powers must exercise the powers conferred upon them acting in concert. They cannot apportion among themselves the duties so delegated, and one of them acting Sub-committee must act in concert.

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alone in purported pursuance of such powers cannot justify his acts by reliance on the statute.[1] The delegation is not equivalent to a resignation by the visiting committee of its own powers, and the delegated authority is subject to resumption at any time.[2]

Delegated authority may be resumed.

(Appointment of committees by Board.)

(3) The Board may also appoint out of their own body such other committees, either of a general or special nature, and consisting of such a number of persons as they think fit, for any purposes which in the opinion of the Board would be better regulated and managed by means of such committees, but the acts of every such committee shall, unless the Board otherwise direct, be submitted for approval to the Board.

The Board.—See sec. 3, *sup.* There are similar provisions in sec. 22, subs. (2) of the Municipal Corporations Act 1882 (45 & 46 Vict. c. 50).

Appointment of officers.

14. The Board shall, as far as practicable, continue all existing officers and servants employed in connection with the existing county lunatic asylums in their several offices and employment, but subject to such power of removal as they would have been subject to if this Act had not passed, and at the same salaries or remuneration; and subject as aforesaid, the Board shall from time to time appoint and pay all such officers as are mentioned in section two hundred and seventy-six of the Lunacy Act 1890, but may delegate their powers under this section to the visiting committees.

The salary or remuneration of any officer or servant of the county council who may for the time being be employed by the Board shall be apportioned between the county council and the Board as they may agree.

The Board.—See sec. 3, *ante.*

Existing.—For definition of, see sec. 2, *ante.*

Officers and servants.—As to who are, see notes to sec. 280, subs. (1) of the Act of 1890, *ante.*

The existing county lunatic asylums.—See them enumerated in the notes to sec. 2, *ante.*

Pay.—As to pensions, see secs. 280-82 of the Act of 1890.

Subject to such power, etc.—See sec. 276, subs. (3) of the Act of 1890, *ante.*

Their powers . . . committees.—See sec. 13, *sup.*

The salary.—As to the necessity for paying attendants sufficiently well to prevent the frequent changing of the *personnel* of the asylum staff, which is one of the great drawbacks of effective asylum administration, see Report of Lancaster Asylums for 1894, pp. 16 and 22, and *ib.* for 1895, pp. 11 and 58.

Transfer of County Asylums to Board.

Transfer of existing county lunatic asylums to Board.

15. On and from the date of the first meeting of the Board the existing county lunatic asylums shall by virtue of this Act be trans-

[1] *Cook* v. *Ward*, 1877, 2 C.P.D. 255.

[2] *Huth* v *Clarke*, 1890, 25 Q.B.D. 391.

ferred to and vested in the Board, together with all lands, buildings, hereditaments, moneys, and other property real or personal (including things in action) held or enjoyed with or vested in any authority or person in respect of such asylums immediately before that date.

The Board.—See sec. 3, *ante.*
Existing.—For definition of, see sec. 2, *ante.*
County lunatic asylums.—They are enumerated in the notes to sec. 2, *ante.*

Saving for contracts, deeds, mortgages, etc.

16. All agreements, awards, bonds, conveyances, contracts, covenants, deeds, leases, mortgages, and other acts and things made, executed, or done in relation to the existing county lunatic asylums by or with the county justices, county council, or visiting committee, or any person or persons on their behalf respectively, and in force at the date of the first meeting of the Board, shall continue as valid and effectual for all purposes in favour of, against, or with reference to the Board as may be required in each case; and the Fulwood and Whittingham Water Act 1882, and any other enactment of a local Act applying to or affecting the existing county lunatic asylums or any of them shall continue to apply, with the substitution of the Board for the county justices or committee of visitors as may be required in each case.

Existing county lunatic asylums.—See notes to sec. 15, *sup.*
The Board.—See sec. 3, *ante.*
Fulwood and Whittingham Water Act 1882, i.e. 45 & 46 Vict. c. xi.

Actions, etc., not to abate.

17. All actions, arbitrations, prosecutions, or other proceedings or cause of proceeding pending or existing at the date of the first meeting of the Board by, with, or against or in favour of the county council or the visiting committee in relation to the existing county lunatic asylums may be continued or enforced and carried on by, with, against, or in favour of the Board as may be required in each case.

The Board.—See sec. 3, *ante.*
The county council.—See sec. 2, *ante.*
Existing county lunatic asylums.—For definition of "existing," see sec. 2, *ante.* As to these asylums, see notes to sec. 2, *ante.*

Regulations to continue in force until repealed or altered.

18. All rules and regulations made before the date of the first meeting of the Board, and relating to the existing county lunatic asylums, shall continue in force until repealed or altered under the provisions of this Act and of the Lunacy Act 1890.

The Board.—See sec. 3, *ante.*
Existing county lunatic asylums.—For definition of "existing," see sec. 2, *ante.* As to these asylums, see notes to sec. 2, *ante.*

Recovery of outstanding debts, etc.

19. All sums of money for the maintenance, treatment, and care of lunatics, and rents and other sums at the date of the first meeting of the Board due or accruing due to the county council or the

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visiting committee in respect of the existing county lunatic asylums may be collected and recovered by the Board.

See notes to sec. 18, *sup.*

Books, etc., to be receivable in evidence.

20. All books and documents which, if this Act had not passed, would have been receivable in evidence, shall be receivable in evidence as if this Act had not passed.

Powers and Duties of Board.

Power of Board to provide asylum accommodation and to manage asylums.

21. (1) The Board shall be under the same obligation to provide asylum accommodation as a local authority under the Lunacy Act 1890, and shall for that purpose have (subject to the provisions of this Act) all the powers conferred on local authorities and visiting committees under Part IX. of that Act, as well as power to maintain, alter, improve, and manage the existing county lunatic asylums on behalf of the county and the county boroughs.

The Board.—See sec. 3, *ante.*
The same obligation.—See sec. 238, *ante.*
Local authority.—For definition of, see sec. 240 of the Act of 1890, *ante.*
All the powers.—See secs. 233-82 of the Act of 1890, *ante.*
The existing.—For definition of "existing," see sec. 2, *ante.*
County lunatic asylums.—As to these, see notes to sec. 2, *ante.*
County.—For definition of, see sec. 2, *ante.*
County boroughs.—See these enumerated in First Schedule, *post.*

(Delegation to visiting committees.)

(2) But it shall not be obligatory on the Board to exercise any of those powers by a visiting committee, though it shall be competent for the Board to delegate to a visiting committee such of those powers as they may from time to time think fit.

See notes to subs. (1).
Visiting committee.—See sec. 13, subs. (1), *ante.*
Delegate.—See note to "may appoint, etc." in sec. 13, subs. (2), *ante.*

(Approval or confirmation by county council unnecessary.)

(3) Nothing in Part IX. of the said Act contained shall be construed so as to require the approval or confirmation by the county council of any act or proceeding of the Board or of a visiting committee.

See notes to preceding subsections.
Part IX.—See *ante*, and see notes to sec. 175, subs. (1), *ante.*

Adaptation of provisions of Lunacy Act 53 & 54 Vict. c. 5.

22. (1) Subject to the provisions of this Act, all acts and things authorised or required by the Lunacy Act 1890 to be done by, to, or with a local authority, may be done by, to, or with the Board as if the Board were the local authority of the entire county.

Subject to the provisions, etc.—See sec. 21, subs. (3), *sup.*
Local authority.—For definition of, see sec. 240 of the Act of 1890, *ante.*
The Board.—See sec. 3, *ante.*
Entire county.—For definition of, see sec. 2, *ante.*

Sec. 22 (2), (3).

(Application of Parts IX. and X. of Act of 1890.)

(2) Subject to the provisions of this Act, Part IX. (except sections two hundred and seventy-three and two hundred and seventy-four which relate to expenses and borrowing), and Part X. of the Lunacy Act 1890 shall, if and so far as any visiting committee is authorised by delegation from the Board to exercise the powers thereby conferred or any of them, apply as if that committee were a visiting committee appointed under the said Act, and so far as such delegation shall not in the case of any visiting committee extend Parts IX. and X. of the said Act (except as aforesaid and except provisions as to reports to and consent of the local authority) shall apply as if the Board were a visiting committee appointed under the said Act.

See notes to subs. (1), *sup.*

Secs. 273 and 274—*ante.* But the Board may borrow under sec. 31, subs. (1), *post.*

Part X.—*ante.*

Visiting committee.—See sec. 13, *ante.*

Delegation.—See sec. 13, subs. (1), and sec. 14, *ante.*

Parts IX. and X.—*ante.*

As aforesaid, i.e. secs. 273 and 274, *v. sup.*

Provisions as to . . . authority.—As to reports see, *e.g.*, sec. 190, sec. 254, subs. (3); as to consents, see sec. 255, sec. 258, subs. (1), *ante.*

(Meaning of asylum.)

(3) For the general purposes of the Lunacy Act 1890 the term "asylum" in that Act shall include any asylum for the time being vested in or under the control of the Board, and any act or thing authorised or required by the said Act to be done by or to any officer of a local authority or visiting committee may be done by or to any officer under this Act holding any corresponding office.

See notes to preceding subsections.

Asylum.—For definition of, see sec. 341, *ante.*

Financial.

Expenses payable out of asylums' fund.

23. (1) All expenses incurred by the Board in the execution of their duties shall be paid out of a fund to be called the asylums' fund.

The Board.—See sec. 3, *ante.*

The asylums' fund.—The Treasurer's account for the year ending 31st March 1894, set out *post*, shows how the receipts and payments of the Asylum Board are dealt with.

(Sums in nature of revenue to be carried to asylums' fund.)

(2) All sums received by the Board in the nature of revenue (other than sums charged for private patients under section two hundred and seventy-one of the Lunacy Act 1890, and other than any excess created by the payment of such greater weekly sums as mentioned in subsection (4) of section two hundred and eighty-three of the same Act) shall be carried to that fund, and any deficiency

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shall be raised by contributions to be made by the county and by each of the county boroughs in accordance with the provisions of this Act.

Other than.—See sec. 271 of the Act of 1890, *ante.*
Private patients.—For definition of, see sec. 341 of the Act of 1890, *ante.*
Other than any excess.—See sec. 283, subs. (4) of the Act of 1890, *ante.*
That fund.—See subs. (1), *sup.*
County.—Definition of, see sec. 2, *ante.*
County boroughs.—See First Schedule, *post.*
In accordance with.—See secs. 24-26, *inf.*

(Sums charged for private patients, etc.)

(3) The sums charged for private patients and any excess created under the enactments above referred to shall be dealt with and applied as nearly as may be in the manner provided with respect to such sums and excess respectively by the said enactments.

The sums charged.—See sec. 271 of the Act of 1890, *ante.*
Any excess.—See sec. 283, subs. (4) of the Act of 1890, *ante.*
Shall be dealt with, i.e. carried to a building and repair fund.

Amounts to be contributed by county and county boroughs respectively.

24. The Board shall, before the first day of March in every year, estimate the total amount required to be raised by contributions for the ensuing year, and shall divide that amount between the county and the county boroughs in proportion to the respective rateable values (as ascertained under section thirty-three of the Local Government Act 1888) of the county and the county boroughs, and shall add to the amount apportioned to the county boroughs the sum of four thousand pounds, or such other sum as may from time to time be fixed by agreement or by arbitration in manner provided by this Act (in this Act referred to as "the added sum").

The amount so apportioned together with the added sum shall be the aggregate amount required to be contributed by the county boroughs, and shall be contributed by them respectively in proportion to their respective rateable values ascertained as aforesaid.

The balance of the amount required to be raised by the Board shall be contributed by the county council.

The Board.—See sec. **3**, *ante.*
County.—For definition of, see sec. **2**, *ante.*
County boroughs.—For definition of, see sec. 2, *ante.*
Section 33, etc.—Sec. **33** of the Local Government Act 1888 provides for the ascertainment of the values in question by a joint committee of all the councils concerned, with the powers of quarter sessions, and a committee of justices under the County Rate Act 1852. The number of representatives is fixed, in default of agreement, by the Local Government Board.
The county council.—For definition of, see sec. 2, *ante.*

Arbitration as to amount of contributions of county boroughs.

25. At the expiration of three years from the thirty-first day of December one thousand eight hundred and ninety-one and of every successive period of three years the county council or the council of any county borough may propose that the amount of the added sum

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be readjusted, and in default of agreement between the county council and all the county boroughs within a period of three months from the date of such proposal, the question of the amount of the added sum shall be referred to a single arbitrator under the Arbitration Act 1889, and that Act shall apply accordingly as if the arbitration were pursuant to a submission. 52 & 53 Vict. c. 49.

The county council.—For definition of, see sec. 2, *ante.*
County borough.—For definition of, see sec. 2, *ante.*
Added sum.—For definition of, see sec. 24, *sup.*
Within . . . proposal.—The date, *i.e.* day of the date (*v. ante* p. 117), of the proposal is excluded. "Month" means calendar month (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3).

Payment of contributions to asylums' fund.

26. (1) For the purpose of obtaining payment of the sums to be contributed by the county and the county boroughs respectively, the chairman of the Board shall before the first day of March in every year send to the county council and to the council of each county borough a precept (which may be in the form in the Third Schedule to this Act or to the like effect) for payment of the amount to be contributed by the county or county borough as the case may be.

The sums to be contributed.—See sec. 24, *sup.*
County.—For definition of, see sec. 2, *ante.*
County boroughs.—For definition of, see sec. 2, *ante*, and First Schedule, *post.*
Chairman.—See sec. 10, *ante.*
Board.—See sec. 3, *ante.*
Send.—*Semble*, by post.
Third Schedule.—See *post.*
Or to the like effect.—The form in the Schedule is the form actually in use.

(Contributions when may be made retrospective.)

(2) Contributions may be made retrospective in order to raise money for the payment of expenses which have been incurred, or of sums which have become payable at any time within six months before the date of the precept, and may be made payable either in one sum or in two half-yearly sums.

See notes to subs. (1).
Within six months before the date, i.e. the day of the date of the precept is excluded. "Month" means calendar month (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3).

(Payment to treasurer of Board.)

(3) The council shall order the required amount of contributions to be paid to the treasurer of the Board out of the county fund or borough fund, as the case may be, at the time or times appointed by the precept.

See notes to preceding subsections.
The treasurer.—As to provision for appointment of, etc., see sec. 14, *ante.*

(Procedure where precept not complied with.)

(4) If the precept of the Board is not complied with, two justices of the county may, on the complaint of the chairman of the Board,

Sec. 26 (4), (5).

issue and send to the treasurer of the authority in default a warrant requiring him to pay to the treasurer of the Board, besides the sums due under the precept, the additional sum mentioned in the warrant, the same being calculated in the proportion of one shilling to every ten on the sum mentioned in the precept, and until payment thereof the treasurer of the Board shall have in respect of the warrant all the powers for the recovery thereof which are given against a guardian or overseer for the recovery of county rates and surcharges, and in addition the Board may recover the sums due by action or other proceeding in any court of competent jurisdiction against the authority in default.

See notes to preceding subsections.

(Reference to single arbitrator.)

(5) If any difference arises concerning the precept it shall be referred to a single arbitrator under the Arbitration Act 1889, and that Act shall apply accordingly as if the arbitration were pursuant to a submission.

See notes to subss. (1)-(4), *sup.*
Any difference.—*Semble*, as to the amount of the demand.

As to credit balances on revenue accounts of lunatic asylums on 1 April, 1889.

27. The credit balance (if any) which stood to the revenue accounts of the lunatic asylums on the first day of April one thousand eight hundred and eighty-nine, after adding all assets accrued on revenue accounts, but not then received, and deducting all outstanding liabilities on those accounts, shall be transferred by the county council to the Asylums Board, and the Board shall in their accounts divide such balance between the county and such of the county boroughs as were non-quarter sessions boroughs on the first day of April one thousand eight hundred and eighty-nine, in proportion to their respective rateable values as ascertained by this Act, and shall credit the county and the said boroughs respectively with the amount of their respective shares of such balance before making the first precept for contribution to the asylums' fund on them respectively.

The first day of April.—The appointed day under the Local Government Act 1888 (51 & 52 Vict. c. 41).
The county council.—See sec. 2, *ante.*
Their respective rateable values.—See sec. 34, *post.*
Making the first precept.—See sec. 26, subs. (1), *ante.*
The asylums' fund.—See sec. 23, subs. (1), *ante.*

Accounts of Board.

28. The accounts of the receipts and expenditure of the Board and of committees of the Board shall be made up to the end of each financial year, ending on the thirty-first day of March, and shall be in the form for the time being prescribed by the Local Government Board.

The Board.—See sec. 3, *ante.*
Committees.—See sec. 13, subss. (1) and (3), *ante.*

The thirty-first day of March.—Cp. also sec. 18 of the Act of 1891, *ante.* Sec. 29 (1)-(5).
The form.—See *post.*

29. (1) The clerk of the Board shall make a return to the Local Government Board of the receipts and expenditure of the Board for each financial year. (Returns to Local Government Board.)

The clerk.—As to provision for appointment etc., of, see sec. 14, *ante.*
Return.—As to time within which return must be made, see subs. (4), *inf.* As to penalty, see subs. (5), *inf.* Cp. sec. 5, subs. (3), *ante*, and sec. 32, *post.*
The Board.—See sec. 3, *ante.*

(2) The return shall be made for the financial year ending on the thirty-first of March, or on such other day as the Local Government Board on the application of the Board from time to time prescribe. (Period of return.)

See notes to subs. (1), *sup.*, and sec. 28, *sup.*

(3) The return shall be in such form and contain such particulars as the Local Government Board from time to time direct. (Form of return.)

(4) The return shall be sent to the Local Government Board within one month after the completion of the audit for the second half of each financial year, and a copy thereof shall also be sent to the Lunacy Commissioners. (Date for sending return.)

Within.—The day of the date of the completion of the audit is excluded (*v. ante* p. 117).
Month, i.e. calendar month (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3).
The audit.—See sec. 30, *post.*
The Lunacy Commissioners.—The return should be addressed to
THE SECRETARY,
Commissioners in Lunacy,
19 Whitehall Place, London, S.W.

(5) If the clerk of the Board fails to make any return required under this section, he shall be liable to a fine not exceeding twenty pounds, to be recovered by action on behalf of the Crown in the High Court. (Fine for default.)

See notes to preceding subsections.
Liable.—As to reduction of such penalties, see sec. 320, *ante.* Sec. 1 of the Public Authorities' Protection Act 1893 (56 & 57 Vict. c. 61), *ante* p. 697, is not available, as the proceeding is taken by the Crown.

30. The accounts of the Board and of committees of the Board shall be audited by the district auditors appointed by the Local Government Board in like manner as accounts of an urban authority and their officers under sections two hundred and forty-seven and two hundred and fifty of the Public Health Act 1875, and those sections and all enactments amending them or applying to audit by (Audit of accounts of Board.)

Sec. 31 (1)-(4).

district auditors (including the enactments imposing penalties and providing for the recovery of sums) shall apply in like manner as if, so far as they relate to an audit of the accounts of an urban authority and the officers of such authority, they were herein re-enacted, with the necessary modifications, and accordingly all ratepayers and owners of property in the county and in each county borough shall have the like rights and there shall be the same appeal as in the case of such audit: Provided that the First Schedule to the District Auditors Act 1879 shall be modified in manner described in the Fourth Schedule to this Act.

The accounts.—See secs. 23-28, *ante.*

The Board.—See sec. 3, *ante.*

Committees.—See sec. 13, subss. (1) and (3), *ante.*

Shall be audited.—See sec. 18 of the Act of 1891, *ante.*

See order of Local Government Board of 24th March 1893 (St. R. & O. 1893, p. 66 n.) as to form of financial statement to be submitted to district auditor.

Power of Board to borrow.

31. (1) For the purpose of paying any money payable under the Lunacy Act 1890, or this Act, or of discharging any portion of the debt by this Act transferred to them, the Board may with the consent of the Local Government Board borrow and reborrow on the security of the asylums' fund and of the contributions thereto such sums as they from time to time require, and may grant mortgages charging the said fund and contributions accordingly.

The Board.—Sec. 3, *ante.*

May.—As to the whole section, cp. sec. 274 of the Act of 1890, and notes thereon, *ante.* See sec. 22, subs. (2), *ante.*

(Repayment of loan, time for.)

(2) A loan under this section shall be repaid within such period, not exceeding thirty years, as the Board with the consent of the Local Government Board determine in each case.

Within such period, i.e. from and excluding the day of the date when the loan was made (see *ante* p. 117).

(Repayment, mode of.)

(3) The Board shall pay off every loan either by equal yearly or half-yearly instalments of principal, or of principal and interest combined, or by means of a sinking fund set apart, invested, accumulated, and applied in accordance with the Local Loans Act 1875, and the Acts amending the same.

See notes to subss. (1) and (2), *sup.*

(Repayment of reborrowed money.)

(4) All money reborrowed shall be repaid within the period fixed for the discharge of the original loan, and every loan for reborrowing shall for the purpose of ultimate discharge be deemed to form part of the same loan as the original loan, and the obligations of the Board with respect to the discharge of the original loan shall not be in any way affected by means of the reborrowing.

See notes to subs. (1) and (2).

Sec. 32. Annual return to Local Government Board with respect to sinking fund.

32. The clerk to the Board shall, within twenty-one days after the expiration of each year during which any sum is required to be set apart for a sinking fund or any instalment is required to be paid under this Act, transmit to the Local Government Board a return, in such form as may be prescribed by that Board and verified by statutory declaration if so required by them, showing the amount which has been paid as an instalment or invested for the purpose of such sinking fund during the year preceding the making of such return, and the description of the securities upon which the same has been invested, and also showing the purposes to which any portion of the moneys invested for the sinking fund and the interest thereof have been applied during the same period, and the total amount remaining invested at the end of the year; and in the event of any wilful default in making such return such clerk shall be liable to a penalty of not exceeding twenty pounds, which shall be paid to the Local Government Board, and shall be recoverable by that Board in the same manner as penalties recoverable under the Public Health Act 1875 in a summary manner may be recovered by parties aggrieved within the meaning of that Act. If it appear to the Local Government Board by such return or otherwise that the Board have failed to pay any instalment or to set apart the sum required by this Act for the sinking fund, or have applied any portion of the moneys set apart for that fund or any interest thereof to any purposes other than those authorised by this Act, the Local Government Board may by order direct that a sum not exceeding double the amount in respect of which such default shall have been made shall be set apart and invested as part of the sinking fund, and such order shall be enforceable by writ of mandamus to be obtained by the Local Government Board out of the High Court.

The clerk.—As to provision for appointment of, etc., see sec. 14, *ante*. As to returns by, of receipts and expenditure, see sec. 29, *ante*.

The Board.—See sec. 3, *ante*.

Within twenty-one days, i.e. all days, Sundays, etc., included. The date of the expiration of the year is excluded (see *ante* p. 117).

Wilful default.—The clerk is liable to be fined for default under sec. 29, whether wilful or not; see subs. (3) of that section, and notes to "liable" therein.

Recoverable.—See sec. 251 of the Public Health Act 1875 (38 & 39 Vict. c. 55).

Enforceable by writ of mandamus.—Sec. 1 of the Public Authorities' Protection Act 1893 (56 & 57 Vict. c. 61), *ante* p. 697, is not available to the Board by way of defence, as the proceeding is by a department of the Government.

Existing debts to be discharged by Board.

33. All existing debts and liabilities incurred in building and furnishing or otherwise on account of any of the existing county lunatic asylums shall, together with all interest thereon, be transferred to and be paid and discharged by the Board, and any such debt which was secured by mortgage or otherwise on the county fund or rates shall, until paid and discharged by the Board, be by

Sec. 34.

virtue of this enactment secured in like manner on the asylums' fund and the contributions thereto, and the mortgagee or other person secured shall have the same rights and remedies as nearly as may be against the said fund and contributions as he would have had against the county fund or rates if this Act had not been passed.

Existing.—For definition of, see sec. 2, *ante.*
Existing county lunatic asylums.—See these enumerated in the note to sec. 2, *ante.*
The Board.—See sec. 3, *ante.*

Miscellaneous.

Provision as to rateable value.

34. For the purposes of this Act the rateable value of the county and of the county boroughs respectively shall be their rateable values as ascertained and fixed for the time being by the joint committee appointed under section thirty-three of the Local Government Act 1888.

County.—For definition of, see sec. 2.
County boroughs.—For definition of, see sec. 2.
Under section 33.—See notes to sec. 24, *ante.*

Power to alter number of members of Board.

35. (1) In the year one thousand eight hundred and ninety-three, and in every subsequent fifth year, it shall be lawful for the county council or the council of any county borough to apply to the Board to increase or diminish the number of representatives to be appointed by any council under this Act, and unless the Board settle the number to the satisfaction of the council so applying, the matter shall be referred to the Local Government Board, who shall by order fix and determine the number of representatives to be appointed by each council.

The county council.—For definition of, see sec. 2, *ante.*
County borough.—For definition of, see sec. 2, *ante.*
The Board.—See sec. 3.
The number.—See secs. 3 and 5, *ante.*

(Substitution of increased or diminished numbers.)

(2) If by reason of any exercise of the powers of this section the aggregate number of representatives on the Board is increased or diminished, such increased or diminished number as the case may be shall be substituted for the aggregate number of representatives fixed by the preceding provisions of this Act.

See notes to subs. (1), *sup.*

As to county boroughs hereafter constituted and as to the county borough of Stockport.

36. (1) If at any time hereafter any borough situate in the county shall be constituted a county borough under the Local Government Act 1888, the council of such borough shall be entitled to elect one member of the Board, and the number of members of the Board shall be increased accordingly, and each such borough shall be a county borough for the purposes of this Act as if it had been named in the First Schedule to this Act.

County borough.—For definition of, see sec. 2, *ante.*
Under the Local Government Act 1888.—See sec. 45 of that statute.
The Board.—See sec. 3, *ante.*
The First Schedule.—See *post.*

Sec. 36 (2).

(2) If at any time hereafter the portion of the county borough of Stockport, now situate in the geographical county of Lancaster, shall cease to be so situate, the council of that borough shall cease to be entitled to elect any member of the Board, and the number of members of the Board shall be deemed to be decreased accordingly.

(Case of Stockport.)

Shall cease.—Without any notice such as is required under sec. 37, *post;* see subs. (7) of that section, *post.*
Stockport has not ceased to be situate in the geographical county of Lancaster, nor is there any prospect of its doing so.
Shall be deemed, i.e. shall be taken conclusively to be (*v. ante* p. 138).

37. The council of any county borough (in this section referred to as "the borough council") may by resolution determine to withdraw itself and the district of its borough (in this section referred to as "the borough") from the operation of this Act, and upon the passing of any such resolution this Act shall, subject to the provisions of this section, cease to apply to the borough council and to the borough, and the following provisions shall have effect (namely) :—

Power to boroughs to withdraw from arrangement under this Act.

County borough.—For definition of, see sec. 2, *ante.*

(1) Notice in writing of the passing of the resolution shall be forthwith sent by the town clerk of the borough to the clerk of the Board, and on the expiration of a period of six months from the service of the said notice in writing on the clerk of the Board the representation of the borough on the Board shall cease, and, except as provided by this section, the liability of the borough to contribute to the expenses of the Board, and the liability of the Board to provide asylum accommodation for the borough shall also cease.

Notice in writing.—Cp. sec. 245, subs. (3) of the Act of 1890, *ante.*
Forthwith.—This word will be construed according to circumstances.[1] It means here with as little delay as is practicable.[2]
The clerk of the Board.—As to provision for appointment of, etc., see sec. 14, *ante.* As to Board, see sec. 3, *ante.*
Months.—"Month" means calendar month (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3.
The liability, etc.—See sec. 21, subs. (1), *ante.*

(2) The borough council shall be subject to the obligations imposed by the Lunacy Act 1890 of providing asylum accommodation for the borough.

[1] Per Jessel, M.R., in 19 Ch.D. 169, *ex parte Lamb*, 1881, 19 Ch.D., at p. 173.

[2] Cp. *Tennant* v. *Bell*, 1846, 9 Q.B. 684.

Sec. 37 (3)-(6).

See notes to subs. (1), *sup.*

Borough council.—For definition of, see subs. (1), *sup.*

The obligations.—See sec. 238, and cp. sec. 245, subs. (4) of the Act of 1890, *ante.*

(3) If any poor law union is situate partly within and partly without the borough, the union pauper lunatics in the asylums of the Board belonging to such union shall be apportioned by the Board between the part of the same union within the borough and the part of the same union without the borough, and the union pauper lunatics so apportioned to the part of the said union within the borough shall, with any vagrant pauper lunatics belonging to the borough, be deemed to be for the purposes of this section the pauper lunatics belonging to the borough.

See notes to preceding subsections.

Union.—Definition of, sec. 341 of Act of 1890, *ante.*

Pauper lunatics.—Definition of, sec. 341 of Act of 1890, *ante.*

Shall be deemed, i.e. shall be conclusively taken to be (see *ante* p. 138).

(4) The borough council shall continue to contribute to the expenses of the Board in manner provided by this Act until the pauper lunatics belonging to the borough in the asylums of the Board have been removed, and the borough council may at any time remove from the asylums of the Board the pauper lunatics belonging to the borough.

See notes to preceding subsections.

(5) An adjustment of the property and debts between the Board and the borough council shall be made within twelve months from the date of the notice of withdrawal by agreement, or in default of agreement, by arbitration in accordance with the provisions of section sixty-two of the Local Government Act 1888, and all the provisions of subsections (2) to (7) of that section, both included, shall apply accordingly.

See notes to preceding subsections.

Property.—See sec. 15, *ante.*

Within, etc.—The day of the date of the notice of withdrawal is excluded (see *ante* p. 117).

With the provisions.—Sec. 62, subss. (2)-(4) of the Local Government Act 1888 provide for the nomination by the parties or the Local Government Board of an arbitrator within the meaning of the Lands Clauses Acts. Subss. (5)-(7) are cited *ante* p. 581.

(6) In such agreement or award provision may also be made for any alteration of the number of representatives on the Board.

Any alteration.—See sec. 35, *ante.*

The number.—See sec. 5, *ante.*

(7) In case the borough of Stockport shall cease to form part of the geographical county of Lancaster, the borough council shall be deemed to have passed a resolution and given a notice as provided by this section, and all the provisions of this section shall apply accordingly. Sec. 37 (7).

See sec. 36, subs. (2), *ante*.

SCHEDULES REFERRED TO IN THE FOREGOING ACT.

FIRST SCHEDULE.

NUMBER OF MEMBERS OF THE BOARD TO BE ELECTED BY COUNCILS OF THE COUNTY BOROUGHS. See s. 5, subs. (2), *ante*.

Name of County Borough.	Number of Members.
Barrow-in-Furness	2
Blackburn[1]	4
Bootle	2
Bolton	4
Burnley	2
Bury	2
Liverpool	8
Manchester	6
Oldham	4
Preston	4
Rochdale	2
Salford	4
St. Helen's	2
Stockport	1
Wigan	2

SECOND SCHEDULE.

MEETINGS AND PROCEEDINGS OF ASYLUMS BOARD. See s. 11, *ante*.

1. The Board shall hold a meeting in the month of November in every year, to be called the annual meeting. The first meeting of the Board shall be summoned by the chairman of the Lancashire County Council. Annual meeting.

2. The chairman may at any time call a meeting. If the chairman refuses to call a meeting, after a requisition for that purpose signed by five members of the Board has been presented to him, any five members of the Board may forthwith on that refusal call a meeting. If the chairman (with- Summoning meetings.

[1] Blackburn has availed itself of the provisions of sec. 37, *ante* (46th Report of the Commissioners in Lunacy, p. 84).

out so refusing) does not, within seven days after such presentation, call a meeting, any five members of the Board may, on the expiration of those seven days, call a meeting.

Notice of meetings.

3. Six clear days at least before any meeting of the Board a summons to attend the meeting, specifying the business proposed to be transacted thereat and signed by the chairman or clerk of the Board, shall be left or delivered by post at the usual place of abode of every member of the Board. Want of service of the summons on any member of the Board shall not affect the validity of a meeting.

Quorum.

4. To constitute a meeting of the Board there must be at least fifteen members present.

Chairman of meetings.

5. The chairman of the Board, or in his absence the vice-chairman of the Board, shall be the chairman at every meeting.

If neither of them is present within fifteen minutes after the time appointed for the meeting, the members then present shall choose another of the members to be chairman of that meeting.

Decision of questions at meetings.

6. All acts of the Board and all questions coming or arising before the Board may be done and decided by the majority of such members of the Board as are present and vote at a meeting held in pursuance of this Act.

In case of equality of votes the chairman of the meeting shall have a second or casting vote.

Minutes.

7. Minutes of the proceedings of every meeting shall be drawn up and fairly entered in a book kept for that purpose, and shall be signed by the chairman of the meeting or of the next ensuing meeting.

Standing orders.

8. Subject to the foregoing provisions of this schedule, the Board may from time to time make standing orders for the regulation of their proceedings and business and vary or revoke the same.

THIRD SCHEDULE.

See s. 26, *ante*.

Form of Precept.

The Lancashire Asylums Board to wit. } To the County Council of Lancashire or (Town Council of the County Borough of).

These are to require you (*the County Council of Lancashire*) or (*the Town Council of the County Borough of*) from and out of the moneys in the hands of your treasurer to pay * on or before the day of into the hands of treasurer of the Lancashire Asylums Board the sum of £ , being the amount required for the expenses of the said Board up to the day of , and if there are no moneys in the hands of your treasurer, to raise the same by means of a rate.

* If the sum mentioned in the precept is to be payable in two instalments, this form must be altered accordingly.

Given under the common seal of the Lancashire Asylums Board in pursuance of a resolution of the Board this day of in the presence of } (L.S.)

Clerk to the Board.

FOURTH SCHEDULE.

ALTERATION OF SCHEDULE TO DISTRICT AUDITORS ACT 1879 (42 & 43 Vict. c. 6). s. 30, *ante*.

For the purposes of the foregoing Act the First Schedule to the District Auditors Act 1879 shall be modified in manner shown in the Second Schedule to the Local Government Act 1888.

That Schedule is as follows :—

Alteration of Schedule to District Auditors Act 1879 (42 *& 43 Vict. c.* 6).

The following scale shall, until otherwise determined by Parliament, be substituted for so much of the scale set forth in the First Schedule to the District Auditors Act 1879 as relates to expenditure amounting to £100,000 and upwards.

Where the Total of the Expenditure comprised in the Financial Statement is	The Sum shall be
£100,000 and under £150,000	£50.
£150,000 and under £200,000	£60.
£200,000 and upwards	£15 in addition for every £50,000 or part thereof.

LANCASHIRE ASYLUMS BOARD.

TREASURER'S ACCOUNT FOR THE YEAR ENDING 31st MARCH 1894.

Dr. RECEIPTS.

	£	s.	d.	£	s.	d.
To Balance in hand, as per last year's account				1,688	9	4
To Sums received in pursuance of Precepts, viz. :—						
From the County Council of Lancaster	33,054	0	0			
From the Council of the County Borough of Barrow-in-Furness	1,081	9	10			
,, Blackburn	2,081	4	2			
,, Bolton	2,029	17	10			
,, Bootle	1,996	12	6			
,, Burnley	1,403	13	4			
,, Bury	1,149	9	0			
,, Liverpool	14,807	6	2			
,, Manchester	13,321	18	2			
,, Oldham	2,396	14	4			
,, Preston	1,684	16	8			
,, Rochdale	1,296	5	4			
,, St. Helen's	1,340	15	2			
,, Salford	3,472	13	2			
,, Stockport	307	4	0			
,, Wigan	796	0	4			
				82,220	0	0
To Lancaster Asylum—Sundry Receipts	127	6	6			
,, Prestwich Asylum ,,	103	7	5			
,, Rainhill Asylum ,,	122	12	6			
,, Whittingham Asylum ,,	135	5	8			
				488	12	1
,, Loans				39,880	0	0
,, Interest allowed by the Lancaster Banking Co.	368	6	7			
Deduct—Commission	193	5	11			
				175	0	8
				£124,452	2	1
To Balance brought down				£15,371	6	3

PAYMENTS. *Cr.*

	£	s.	d.	£	s.	d.
By LANCASTER ASYLUM :—						
Ordinary Expenditure	3,514	17	1			
Expenditure out of Loans	5,932	3	0			
				9,447	0	1
By PRESTWICH ASYLUM :—						
Ordinary Expenditure	9,703	7	9			
Expenditure out of Loans	0	0	0			
				9,703	7	9
By RAINHILL ASYLUM :—						
Ordinary Expenditure	7,997	18	2			
Expenditure out of Loans	2,889	1	2			
				10,886	19	4
By WHITTINGHAM ASYLUM :—						
Ordinary Expenditure	8,984	8	2			
Amount of Award *re* Tramway	1,650	14	10			
Expenditure out of Loans	463	3	2			
				11,098	6	2
By WINWICK ASYLUM :—						
Expenditure out of Loans (Purchase of Site)				21,000	0	0
By Interest on Loans	19,516	18	8			
,, Repayment of Loans	25,950	0	0			
				45,466	18	8
,, Travelling and Miscellaneous Expenses				145	12	4
,, Law Expenses				263	5	8
,, Salaries of Officers of Asylums Board				600	0	0
,, Establishment Charges				365	0	4
,, Maintenance of Lunatics				104	5	6
				109,080	15	10
By Balance in hand				15,371	6	3
				£124,452	2	1
By Cash to the Credit of the Treasurer with the Lancaster Banking Co.				15,375	13	7
Deduct—Due for Income Tax				4	7	4
				£15,371	6	3

HENRY ALISON, *Treasurer.*

(5) INEBRIATES ACTS

THE INEBRIATES ACTS 1879 (42 & 43 VICT. C. 19) AND 1888 (51 & 52 VICT. C. 19)

BEING :

42 & 43 VICT. C. 19.—An Act to facilitate the Control and Cure of Habitual Drunkards. [3rd July 1879.]

51 & 52 VICT. C. 19.—An Act to amend the Habitual Drunkards Act 1879. [24th July 1888.]

BE it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by authority of the same, as follows :—

PRELIMINARY.

Sec. 1.

1. This Act may be cited as the Habitual Drunkards Act 1879. Short title.

The Habitual Drunkards Act 1879 and the Inebriates Act 1888 are to be read and construed together as one Act, and may be cited together as the Inebriates Acts 1879 and 1888.

History of special legislation for inebriates.

It may be convenient here to trace the history of the question of special legislation for habitual drunkards.

Down to the year 1866 no legislative provision of any kind had been made for the care and cure of habitual drunkards not coming within the range of the criminal law, though the necessity for legislation on the subject had been insisted upon.[1] In the Lunacy Acts (Scotland) Amendment Act 1866 (29 & 30 Vict. c. 51), however, there was a provision (sec. 15) which impliedly enabled an inebriate to submit himself voluntarily to treatment in an asylum, but it proved, as might have been expected, entirely nugatory. "Whether an habitual drunkard," says Professor Gairdner,[2] "is ever insane or not, to ask him to declare himself to be so is practically to court defeat, as every one must know who has had to do with this unfortunate class at all."

Lunacy Acts (Scotland) Amendment Act 1866.

Criticism of.

In 1870[3] Dr. Dalrymple moved a resolution on the subject of habitual drunkards (Hansard, vol. cxcix. 1241), and subsequently introduced a Bill (No. 197, 1870). This Bill provided for both criminal and non-criminal habitual drunkards. As regards the former it was provided that magistrates or boards of guardians might establish reformatories either as separate institutions or as wings of a prison or workhouse (clauses 12 and 13), to which

Dr. Dalrymple's Bill, 1870.

[1] *E.g.* by Dr. R. B. Grindrod in his prize essay "Bacchus"; and by the late Sir Robert Christison in a lecture "On some of the Medico-Legal Aspects of Intemperance," delivered before the Royal College of Surgeons on 19th March 1858, and afterwards (in 1861) published by A. & C. Black.

[2] "Drunkenness and Dipsomania," *Birmingham Medical Review*, January 1890.

[3] In what follows free use has been made of an admirable summary of the history of inebriate legislation by Mr. J. G. Legge, Secretary to the Inebriates Committee, 1893, and printed as an Appendix to the evidence taken by that Committee, c. 7008, i. 1893, p. 92, App. vi.

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habitual drunkards might be committed on a third conviction for drunkenness within six months (clause 15). To this class of reformatories might be sent habitual drunkards who were unable to pay for their maintenance in any other (clause 14). The limits of detention were to be three and twelve months (clause 15), although there was power to extend the period of committal by six months (clause 16). As regards non-criminal habitual drunkards, reformatories under the control of the Lunacy Commissioners (clauses 4 and 8) were to be established by individuals, by corporations, or by magistrates assembled in quarter sessions (clause 3), to which habitual drunkards might be admitted at the request of a near relation, friend, or guardian, upon the production of two medical certificates, and upon the affidavit of some credible witness other than the applicant (clause 6). The limits of detention were to be three and twelve months, though there was given a power to discharge the person confined (clause 9), and to shorten or extend the period of detention (clause 11).

The Bill did not reach second reading. In 1871 Dr. Dalrymple re-introduced the Bill (No. 38 of Session 1871), but withdrew the motion for second reading on the suggestion of the then Home Secretary (Mr. Bruce) that a Select Committee should be appointed the following session to consider the subject (Hansard, vol. ccvii. 1501).

Select Committee, 1872.

The Select Committee, consisting of Sir H. Johnstone, Mr. Birley, Mr. H. Samuelson, Mr. Wharton, Dr. Playfair, Mr. Akroyd, Mr. Mitchell Henry, Lord Claud Hamilton, Mr. Miller, Mr. Downing, Major Walker, Mr. Winterbotham, Mr. Read, Colonel Brise, and Dr. Dalrymple (chairman), was

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appointed early in 1872, and reported in June of that year (Parliamentary Paper 242 of Session 1872). In the following July Dr. Dalrymple introduced an elaborate Bill to carry out the Committee's recommendations (No. 279 of Session 1872).

Dalrymple Bill, 1872.

The Bill proposed to provide two classes of retreats: (1) Houses licensed by the justices into which an habitual drunkard might be received (clause 8) on his own request, or on that of the guardian of his person, appointed by the Court of Chancery (clause 71); (2) certified industrial hospitals (clause 39) to the support of which boards of guardians and prison authorities might contribute (clauses 42 and 43), and to which an habitual drunkard (see clause 7 for definition) might be committed by a court of summary jurisdiction on conviction of drunkenness (clause 56). There was a power given for the temporary removal of a person from a licensed house (clause 28), and for release on licence from a hospital (clause 67). Clause 69 also proposed to give extensive powers of re-taking escaped patients. The clause ran as follows:—

"If a patient escape from a hospital he may at any time before the expiration of his prescribed period of detention be retaken without warrant, and be detained, as if he had not escaped."

The central authority under the Bill was to be the Home Secretary.

The Bill did not proceed beyond first reading in 1872, and when re-introduced in 1873 (Bill No. 11 of Session 1873) the House was counted out on the second reading.

House of Lords Select Committee.

Dr. Dalrymple died in the autumn of 1873, and no further proposals for legislation on the subject of inebriates came before Parliament until 1877. In that year the Archbishop of Canterbury moved in the House of Lords for the appointment of a Select Committee on Intemperance. The Committee finally reported in July (H. L. paper (28) of Session 1878-79), though habitual drunkenness was not directly dealt with.

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During the same session, in the House of Commons, Dr. Cameron introduced an Habitual Drunkards Bill (No. 105 of Session 1877), an important development of the Bills of 1872 and 1873. Provision was made for the establishment of two classes of institutions (*a*) retreats to be licensed by the local authority, the justices in quarter sessions (clause 6), and (*b*) inebriate reformatories to be provided directly by the local authority (clause 17). To *retreats* persons might be admitted on their own application (clause 10) or on committal by the justices in petty sessions, sitting either with or without a jury to hear a summons granted on the application of the parent, husband, wife, relative, or guardian of an habitual drunkard (clauses 11, 12, 13). To *reformatories* were to be sent (1) habitual drunkards convicted by a court of summary jurisdiction (clause 29), or (2) persons who, having been convicted of drunkenness three times within three months, were unable to find sureties for their good behaviour for twelve months (clause 30). A power of discharge was given (clause 15), and also of leave of absence on licence (clause 53). On escape an habitual drunkard might be retaken at any time before the expiration of his prescribed period of detention "by any officer, attendant, servant, or other person employed in or about such retreat or inebriate reformatory, or by any peace officer, without warrant, and be detained as if he had not escaped" (clause 75).

Dr. Cameron's Bill, 1877.

Reformatories.

Retreats were to be in the main private speculations, power being given to enforce payment by the habitual drunkard himself (clause 63), or by his relatives (clause 64), or, in the case of a pauper, by the union or parish from which he was sent. *Reformatories* were to be provided out of local rates (clause 23), with contributions from the Treasury (clause 57), and payments by habitual drunkards, their relatives, or unions as in the case of retreats.

Retreats.

The Bill did not reach a second reading in 1877, and was re-introduced in 1878 (Bill No. 27 of Session 1878). In moving the second reading on the 3rd July (Hansard, vol. ccxli. 688), Dr. Cameron announced his readiness to abandon the compulsory clauses in committee, and after a long debate the Bill was read a second time without a division. The Bill was then considered in committee and reported as amended (Bill No. 250 of Session 1878). The effect of the Bill as amended was that it made provision for the establishment of *retreats* (as described above) alone, to which persons should only be admitted on their own application (clause 9).

In 1879 Dr. Cameron re-introduced the Bill as amended in 1878 (Bill No. 47 of Session 1879). The Bill, with important modifications, especially in limiting the power of retaking escaped patients, passed through the Commons (Hansard, vol. ccxliii. 1384).

Act of 1879.

In the House of Lords the Bill was taken charge of by Lord Shaftesbury, and there was an important debate on the second reading, in the course of which Lord Selborne expressed the opinion that perhaps over-caution was the fault of the measure (Hansard, vol. ccxlv. 1945).

The Bill, the duration of which was limited to ten years, received the Royal Assent in July as the Habitual Drunkards Act 1879.

In 1887 Dr. Cameron introduced a Bill (No. 229 of Session 1887) to give permanency to the Act of 1879 (clause 2), to enable a licensee to appoint a deputy (clause 3), and also to provide that the attestation of an application for admission to a retreat might be by any justice of the peace instead of two justices. The Bill made no progress that session.

Act of 1888.

In 1888 it was reintroduced by Dr. Cameron in two forms, one (Bill No. 141 of Session 1888) identical with the Bill of 1887, and the other (Bill

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No. 203 of Session 1888), changing the name to the Inebriates Act (clause 1), with a view to removing the objection which patients felt to the title Habitual Drunkards,[1] making permanent the Act of 1879 (clause 2), enabling a licensee to appoint a deputy to act for six weeks only in the year (clause 3), and providing that the attestation of an application for admission might be by any two justices instead of by two justices having summary jurisdiction in the place where the matter requiring the cognisance of a justice arises (clause 4 taken in connection with secs. 3 and 10 of the Act of 1879). (See notes to sec. 4 of Act of 1888, *post.*) The latter Bill passed the House of Commons, and on its introduction in the House of Lords by the Earl of Aberdeen was after a short debate agreed to (Hansard, vol. cccxxvii. 1513). It received the Royal Assent in July 1888.

Restorative Homes (Scotland) Bill.

A Bill applicable to Scotland and intended to be called the Restorative Homes (Scotland) Act was drafted by Mr. Charles Morton, sometime Crown Agent for Scotland, and submitted to the Marquis of Lothian when he was Scotch Secretary. This measure has met with approval from the medical profession,[2] and the Departmental Committee of 1891 recommend it for consideration if special legislation for Scotland is necessary (Report, 1893, c. 7008, p. 8, par. 23). It is printed as Appendix v. to the evidence taken by that Committee, 1893, c. 7008, i.

In 1891 Lord Herschell moved in the House of Lords for an inquiry to ascertain whether some better method than the present could not be devised for dealing with habitual drunkards, especially those coming before the police courts (Hansard, vol. cccliii. 1701).

The matter was again brought up by Lord Herschell in 1892 in connection with the wider question of habitual criminals. In the course of the short debate which followed Lord Herschell's speech the Lord Chancellor (Lord Halsbury) stated that it was the intention of the Home Secretary to appoint a Departmental Committee to inquire into the best mode of dealing with habitual drunkards (Hansard, 4th series, vol. ii. 1306). Mr. Matthews accordingly appointed the Committee, which consisted of Mr. J. L. Wharton, M.P., as chairman, and Sir Wm. Guyer Hunter, Mr. E. Leigh Pemberton, Mr. C. S. Murdoch, and Dr. Nicolson, then superintendent of Broadmoor, now one of the Lord Chancellor's Medical Visitors in Lunacy, as members, and

Committee of 1893.

which reported on 22nd April 1893, c. 7008. The inquiry of the Committee related to: (A) Cases of drunkenness to which the Inebriates Acts 1879 and 1888 were applicable; (B) cases of habitual drunkards who came within the action of the criminal law and are apprehended for and charged with drunkenness, whether accompanied with violence or not. Their recommendations were as follows. As regards (A):—

Recommendations of. (1) Rules as to admission.

(1) That the Secretary of State should be empowered to make rules and settle the form of affidavits regulating the admission and re-admission of voluntary applicants to retreats in addition to, or in substitution for the affidavits prescribed in the Schedule to the Habitual Drunkards Act 1879, by which further facilities would be afforded to such applicants.

(2) Establishment of retreats.

(2) That the establishment of retreats should be encouraged for those who cannot provide the whole of the funds necessary for their

[1] See as to this 7th Report of Inspector of Retreats, 1887, c. 5200, p. 4; 10th *ib.* 1890, c. 6163, p. 3.

[2] Cp. *Brit. Med. Jour.* 3rd Aug. 1889, p. 273; *Edin. Med. Jour.* June and July 1889.

maintenance, the residue being supplied by voluntary contributions, and if thought desirable, by aid from the public rates, and that with regard to such retreats the Secretary of State should be empowered to make regulations by which a certain amount of work suited to each particular case should be enforced.

(3) That the maximum period for which a patient may be confined in a retreat should be extended to two years. (3) Period of detention.

(4) That power should be given for the compulsory committal to a retreat of persons coming within the definition of an habitual drunkard, as laid down in the Act of 1879, on the application of their relations or friends, or other persons interested in their welfare. Such application to be made to any Judge of the High Court, County Court Judge, stipendiary magistrate, or justices sitting in quarter or petty session, who shall decide on the propriety of the application. (4) Compulsory committal.

(5) That the property of the person committed should be liable for his maintenance, and that the order for committal should provide, when necessary, for the appointment of a trustee of the patient's estate during the period of committal, with power to apply the same towards the support of his wife and family. (5) Application of property.

(6) That rules regulating the length of period of detention, the procedure on applications for committal and providing for the service of notice thereof on all proper parties should be authorised to be made by the Secretary of State with the concurrence of the Lord Chancellor, as well as such additional rules relating to the inspection of those retreats to which patients may be committed under any order to be made in manner above mentioned, as may be considered necessary. (6) Rules as to detention.

(7) That rules should in like manner be made for the release in proper cases of any inmate of a retreat before the period of his detention has expired, for enforcing his detention during that period until released, for retaking him in the event of escape, and for the enforcement of more rigorous discipline in the case of refractory patients. (7) Rules as to release, etc.

(8) That any order made for the compulsory committal of an habitual drunkard should be subject to appeal to a Divisional Court. (8) Appeal to Divisional Court.

As regards (B)—

(9) That authority, as in section 25 of the Intoxicating Liquors (Ireland) Act 1874 (37 & 38 Vict. c. 69), should be given to the police to apprehend, without warrant, persons drunk and incapable in public highways, places, and buildings, and to detain such persons when their names and residences shall be unknown to the police and cannot be ascertained, until they can be brought before a magistrate, and thereby to carry out the provisions of section 12 of the Licensing Act 1872 (35 & 36 Vict. c. 94), the first clause of which is reported to have become largely inoperative.

(10) That additional powers should be given to magistrates to bind in sureties and recognisances for a considerable period habitual drunkards coming before them.

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(11) That reformatory institutions should be provided, aided by contributions from Imperial and local funds towards the cost of their building and maintenance (as in the case of existing reformatories and industrial institutions for juvenile offenders), for the reception and detention of criminal habitual drunkards, who might be subjected to less rigorous discipline than in existing prisons, and to the performance of such labour as may be prescribed.

(12) Your Committee, while recognising the advantage of the establishment of such reformatories in separate buildings for this class of criminals, would recommend that failing or pending the establishment thereof the existing accommodation in prisons, lunatic asylums, or poor-houses might be utilised for this purpose.

(13) That magistrates should have the power to commit to such reformatory institutions for lengthened periods, with or without previous punishment of imprisonment, habitual drunkards (*a*) who come within the action of the criminal law; (*b*) who fail to find required sureties and recognisances; (*c*) who have been brought up for breach of such recognisances; (*d*) who are proved guilty of ill-treatment or neglect of their wives and families; (*e*) who have been convicted of drunkenness three or more times within the previous 12 months.

Reports of Scotch and Prison Committees, 1895.

The general conclusions of that Committee have been corroborated by the Reports of the Departmental Committees on Habitual Offenders, Inebriates, etc. (Scotland), 1895, c. 7753, and see Evidence, c. 7753, i., and on English Prisons.

In the session of 1894 Lord Herschell, then Lord Chancellor, introduced into the Upper House a Bill, which was read a second time before the dissolution in that year, to amend the Inebriates Acts.

Commencement of Act.

2. This Act shall commence and come into operation on the first day of January one thousand eight hundred and eighty, *and shall be in force until the expiration of ten years from the passing thereof and to the end of the then next session of Parliament*, **and shall be and remain in force until otherwise provided by Parliament.**

Act of 1888, sec. 2.

The want of permanence in the Act of 1879 discouraged applications for licences.[1]

3. In this Act—

Interpretation.

The expression "Secretary of State" means one of Her Majesty's principal Secretaries of State.

The expression "summary conviction" means conviction before a court of summary jurisdiction.

The expression "Summary Jurisdiction Acts" means—

(1) As regards England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the

[1] 1st Report of Inspector of Retreats, par. 5.

"performance of the duties of justices of the peace out of "sessions within England and Wales with respect to "summary convictions and orders," and any Act amending the same; and

(2) As regards Scotland, the Summary Procedure Act, 1864; and — 27 & 28 Vict. c. 53.

(3) As regards Ireland, with reference to any matter or proceeding in the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for or the police of such district, and with reference to any matter or proceeding elsewhere in Ireland, the Petty Sessions (Ireland) Act 1851, and the Acts amending the same. — 14 & 15 Vict. c. 93.

The expression "court of summary jurisdiction" means—

(*a*) As regards England and Ireland, any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Acts; provided that the court when hearing and determining an information or complaint under this Act shall be constituted either of two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice; and

(*b*) As regards Scotland, the sheriff or his substitute.

"Justice" means a justice or justices of the peace, metropolitan police magistrate, stipendiary or other magistrate by whatever name called, *having jurisdiction under the Summary Jurisdiction Acts in the place where the matter requiring the cognizance of a justice arises.* — Repealed by sec. 4 of the Act of 1888.

"A retreat" means a house licensed by the licensing authority named by this Act for the reception, control, care, and curative treatment of habitual drunkards.

"Habitual drunkard" means a person who, not being amenable to any jurisdiction in lunacy, is notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself or herself or to others, or incapable of managing himself or herself, and his or her affairs.

Secretary of State.—Viz. in practice the Home Secretary alone. Neither the Secretary for Ireland nor the Secretary for Scotland is one of the principal Secretaries of State, and the Inebriates Acts are not included among the statutes the powers of a Secretary of State under which are transferred to the Scotch Secretary by the statute constituting his office (48 & 49 Vict. — Recommendation as to Secretary for Scotland.

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c. 61, sec. 5, subs. (1), and Sched., Part I.). The Scotch Departmental Committee, 1894, recommend that in any amendment of the Inebriates Acts the powers conferred on the Home Secretary should in the case of retreats in Scotland (where no licensed retreats yet exist) be conferred on the Secretary for Scotland.[1]

"Principal Secretaries of State."

Principal Secretaries of State.—These are the Home, Foreign, Colonial, War, and Indian Secretaries. In point of practice the powers under the Inebriates Acts are exercised by the Home Secretary alone.

Having jurisdiction . . . arises.—This clause was repealed by sec. 4 of the Act of 1888 (see notes to sec. 10, *post*).

"Retreat."

Retreat.—The use of this term was possibly suggested by the name given by Mr. William Tuke to his famous asylum in Yorkshire (see *ante* p. 71).

Licensed.—As to licensing of retreats, see sec. 6, *post.*

The licensing authority.—See Sched i., *post.*

Habitual drunkards. Objection to term.

Habitual drunkards.—It is rather singular that as the title of the Act of 1879 was altered in the enactment of 1888 in order to avoid wounding the susceptibilities of patients, the word "inebriate" has not been substituted for "habitual drunkard" throughout. The retention of this word appears still to deter patients from coming into retreats.

Habitual drunkard, when subject to jurisdiction in lunacy.

Not being . . . lunacy.—Habitual drunkenness may render a person amenable to the jurisdiction in lunacy if it produces such a degree of mental infirmity as to make him, as a fairly constant condition, incapable of managing himself or his affairs (see notes to sec. 116, subs. (1) (*d*), and sec. 341, of the Act of 1890, *ante*). As to the jurisdiction in lunacy, see sec. 108, subs. (1), *ante*. The power of the justices under sec. 2 of the Criminal Lunatics Act 1838, *ante*, to deal with deranged persons purposing to commit a crime is, it is thought, a "jurisdiction in lunacy" within this definition. See notes to "dangerous . . . others," *inf.*

What necessary to satisfy definition.

Habitual . . . at times.—In order to satisfy this definition there must be both *habitual* intemperate drinking of intoxicating liquor, and, in consequence of such indulgence, temporary dangerousness or incapacity on the part of the patient. If either of these states have become permanent, the patient is amenable to the jurisdiction in lunacy. Doubts having been expressed as to the scope of the words "intoxicating liquor,"[2] it is clear from the use of the words "drunkard" and "drinking of," *sup.*, that the eating or smoking of opium, or the hypodermic injection of morphia or any other substance could not come within the definition. One case of excessive tea-drinking has been treated under the Act.[3] But if the question came to be determined judicially, it may be doubted whether any other intoxicating liquor than alcohol, or possibly ether, methylated spirits, or some recognised and commonly-used intoxicant would be held to satisfy the definition.

It is conceived that a narcotic would not be held to be an intoxicating liquor.

Powers of justices as to dangerous lunatics.

Dangerous . . . others.—Justices have powers under the Criminal Lunatics Act 1838, sec. 2, to commit to a lunatic asylum persons apprehended as intending to commit some crime if derangement of mind exists. It is

[1] Report, 1895, c. 7753.

[2] See Committee of 1891, Evid. 1893, c. 7008, i., Ans. 1338 (*d*), 1346; Scotch Departmental Committee, 1894; Evid. 1895, c. 7753, i., Ans. 14255 *et seq.*

[3] Committee of 1891, Ans. 894-97.

In the American case of *Youngs* v. *Youngs*, 130 Ill. 230, it was said that drunkenness "cannot be held to include intoxication produced by the hypodermic injection of morphine."

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Whether a "jurisdiction in lunacy."

conceived that this is a "jurisdiction in lunacy" within the meaning of this definition, and that a person at times mentally deranged, owing to inebriety, *and* not merely being dangerous to himself or others, but discovered and apprehended under circumstances denoting a purpose to commit an indictable offence, could not be dealt with under the Inebriates Acts.

Or incapable . . . affairs.—See notes *ante* pp. 265 and 301. It is sufficient if the party is incapable of managing *either* himself *or* his affairs (see *ante* p. 270, note 8).

Incorporation of Schedules with Forms and Rules therein.

4. The Schedules to this Act, with the notes and directions therein, shall have effect as part of this Act; and the Rules contained in those Schedules and the Forms therein given, or Forms to the like effect, shall be observed, with such variations as circumstances require, by the persons, for the purposes, and in the manner therein indicated; but no instrument made in execution or intended execution of this Act shall be invalidated for defect in form only.

The Schedules . . . observed.—See *post.* As to rules for management of retreats, see sec. 12, *post.* Wilful failure to comply with the provisions of this section is an offence against the Acts (see sec. 23, *post*). As to words "shall be observed," see notes to sec. 226 of Act of 1890, *ante.*

With such variations.—There is a similar provision in sec. 339 of the Lunacy Act 1890, *ante.*

Local authority and clerk of local authority.

5. The several bodies and officers mentioned in the second and third columns respectively of the First Schedule to this Act shall be the local authority and clerk of the local authority respectively under this Act, in reference to the several corresponding districts mentioned in the first column of the said Schedule.

See Schedule i., *post.*

Retreats.

Establishment of retreats.

6. The local authority may, subject to any conditions which such local authority shall deem fit, grant to any person, or to two or more persons jointly, a licence for any period not exceeding thirteen months to keep a retreat; and may, from time to time, revoke or renew such licence. The application for such licence shall be in the Form No. 1 in the Second Schedule hereto, or to the like effect. The licence shall be in the Form No. 2 in the same Schedule, or to the like effect. One at least of the persons to whom a licence is granted shall reside in the retreat and be responsible for its management. A duly qualified medical man shall be employed as medical attendant of such retreat, provided that when the name of the licensee shall be on the Medical Register he may himself act as such medical attendant.

The local authority.—As to who are the local authority, see Sched. i., *post.*

Conditions.—A condition has in one case at least been made that the

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local authority should have the right to inspect the premises at all times, and the Inspector of Retreats recommends this example to licensing authorities.[1]

Any person.—As to who are qualified, see sec. 7, *post.*

A licence.—See Form No. 2, Sched. ii., *post.*

Objection to short duration of licence.

Any period . . . months.—Objection has been taken to the shortness of the duration of the licence, on the ground that it both discouraged applicants and prevented licensees from laying out capital on the improvement of retreats.[2] "Month" means calendar month (Interpretation Act 1889 (52 & 53 Vict. cap. 63), sec. 3).

Number of retreats.

A retreat.—There are at present twelve licensed retreats in England, and none in Scotland or Ireland. See Report for 1895 (1896, c. 8188).

Revoke or renew.—As to transfer of licence, see sec. 8, *post.*

Application.

The application.—An application may include two or more houses belonging to the same person or persons, provided no one of the houses is separated from another or others of them otherwise than by land in the same occupation and by a road, or in either of these modes (Sched. ii., Form 1, r. 1, *post*). The application is to be made not less than ten days before the sessions or meeting at which it is to be considered (*ib.* r. 2, *post*). The clerk of the local authority is to give notice of the application having been made by advertisement published in a newspaper circulating in the district of the local authority six days at least before the same sessions or meeting (*ib.* r. 3, *post*). As to accompanying plan, see Sched. ii., Form 1, *post.*

Form No. 1 . . . effect.—See *post.* The form may be varied (see sec. 4, *ante*).

A duly qualified medical man.—See definition of "medical practitioner" in sec. 341 of the Lunacy Act 1890, *ante.*

To whom licence not to be given.

7. No licence shall be given to any person who is licensed to keep a house for the reception of lunatics.

Licence.—As to licences, see notes to sec. 6.

Application of section. Joint applicants.

Any person.—In the case of joint applicants, the fact that either or any of them was so licensed under the Lunacy Act would be a disqualification.

Licensed . . . lunatics.—As to the licensing of houses for the reception of lunatics, see sec. 207 of the Lunacy Act 1890. Interest in the keeping of a licensed house is not a disqualification. This section applies to transferees under sec. 9; but, *semble*, a deputy under sec. 3 of the Inebriates Act is not legally disqualified although he is interested in a licensed house. The local authority might, however, decline to approve of such a nomination.

Power of local authority to transfer licence.

8. If the licensee of any retreat becomes incapable, from sickness or otherwise, of keeping such retreat, dies, or becomes bankrupt, or has his affairs liquidated by arrangement, or becomes mentally incapable or otherwise disabled, the local authority, by writing under their hands, indorsed on the licence, may transfer the licence to another person, if the local authority, in its discretion, shall think fit.

[1] 14th Report, 1894, c. 7519, p. 3, par. 2.

[2] 1st Report, Inspector of Retreats, 1881, c. 354, p. 1, par. 5.

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The licensee.—As to who may be, see sec. 7, *sup.*

Incapable.—The licensee may appoint a deputy to act for him during his absence, subject to the approval of the local authority for any period or periods not exceeding in all six weeks in one year (sec. 3, Inebriates Act 1888, *post*).

The local authority.—See Sched. i., *post.*

The licence.—See sec. 6, *ante.*

Another person.—Sec. 7, *sup.*, applies to a transferee.

Act of 1888, sec. 3. Licensee may appoint a deputy.

3. Subject to the approval of the Local Authority granting a licence for a retreat, the licensee of any retreat may from time to time appoint a deputy to act for him during his temporary absence, and such deputy shall during the absence of the licensee have and exercise all powers, and be subject to all the duties, disabilities, prohibitions, and penalties imposed upon the licensee of such retreat under the provisions of the Habitual Drunkards Act 1879. Provided always that the appointment of such deputy shall not entitle him to act for such licensee during any period or periods exceeding in all six weeks in any one year.

The local authority.—See Sched. i., *post.*

A licence.—See sec. 6.

From time to time.—Not exceeding six weeks in all in the year.

A deputy.—It does not appear that a person is disqualified to act as deputy because he is interested in a licensed house (sec. 7). The local authority might decline to approve, however, of such an appointment.

Query whether interest a disqualification.

Temporary absence.—From any reasonable cause, such as sickness, business, holidays, etc.

Temporary absence.

Powers.—Viz. to apply for a renewal of a licence (sec. 6, *ante*); to receive applicants and detain them under sec. 10, *inf.*; to request orders of discharge (sec. 12), or leave of absence (sec. 19, *post*); to secure recapture of patient on forfeiture of leave of absence (sec. 21), or escape (sec. 26, *post*); to take proceedings against refractory patients (sec. 25, *post*).

Powers.

Duties.—Viz. to observe the Forms and Rules in the Schedules (sec. 4, *ante*), and the Rules made under sec. 17, *post*; to reside in the retreat and be responsible for its management (sec. 6, *ante*); to discharge patients on notice from the local authority under sec. 9, *ante*, or an order of the Secretary of State under sec. 15, *post*, or of the Judge under sec. 18, *post*; to send notices of reception of patients (sec. 11, *post*); to certify at death of patient under sec. 27, *post.*

Duties.

Disabilities.—See sec. 8, *post.*

Penalties.—See secs. 23, 24, 27, *post.*

Removal of habitual drunkard from unfit habitation.

9. If any retreat becomes unfit for the habitation of the persons detained therein under this Act, or otherwise unsuitable for its purpose, the local authority or the Inspector of Retreats appointed under this Act shall order their discharge from such retreat on a day to be mentioned in the order. Such order shall be signed by the clerk of the local authority or by the inspector, as the case may be.

The licensee of the retreat from which such persons or person are

Sec. 10. Notice of such removal.

to be so removed shall, with all practicable speed, send by post a copy of such order to the person by whom the last payment for each person so to be removed from the retreat was made, or one at least of the persons who signed the statutory declaration under section ten of this Act.

The local authority.—See Sched. i., *post.*

The Inspector of Retreats.—See sec. 13, *post.*

Failure to comply with provision an offence.

The licensee . . . order.—Knowing and wilful failure to comply with this provision is an offence against the Act (see sec. 23, *post*). As to punishment of such offences, see sec. 29, *post.*

Inebriates chiefly paying patients.

The last payment.—Practically all the habitual drunkards now detained in retreats are paying patients. See a recommendation of the Departmental Committee of 1892 on this subject, *ante* p. 952.

One at least . . . Act.—See sec. 10, *inf.*

Persons may be admitted to retreats on their own application.

10. Any habitual drunkard desirous of being admitted into a retreat may make application in writing to the licensee of a retreat for admission into such retreat, and such application shall be in the Form No. 3 in the Second Schedule hereto, and shall state the time during which such applicant undertakes to remain in such retreat. Such application shall be accompanied by the statutory declaration of two persons to the effect that the applicant is an habitual drunkard within the meaning of this Act.

The signature of the applicant to such application shall be attested by two justices of the peace, and such justices shall not attest the signature unless they have satisfied themselves that the applicant is an habitual drunkard within the meaning of this Act, and have explained to him the effect of his application for admission into a retreat and his reception therein, and such justices shall state in writing, and as a part of such attestation, that the applicant understood the effect of his application for admission and his reception into the retreat.

Such applicant, after his admission and reception into such retreat, unless discharged or authorised by licence as hereinafter provided, shall not be entitled to leave such retreat till the expiration of the term mentioned in his application, and such applicant may be detained therein till the expiration of such term; provided that such term shall not exceed the period of twelve calendar months.

Any habitual drunkard.—See definition of in sec. 3, and notes thereon, *ante.*

Act applies only to voluntary committal.

Desirous . . . may.—The present Act provides only for voluntary committal. This limitation, in the opinion of the licensees of retreats, the Inspector of Retreats, and the several Departmental Committees that have investigated the subject, seriously hampers the success of the Inebriates Legislation, inasmuch as the majority of inebriates cannot be induced to apply for their own committal, and the resolution of many of those who do apply evaporates before the statutory formalities necessary to their admission to a retreat can be complied with. It is also contended that committals under the Acts of 1879 and 1888, where they are effected, are in reality com-

Case for compulsory committal.

pulsory, since the friends of patients put upon them a moral pressure which they are unable to resist. In a recent case in Scotland a Procurator-Fiscal dropped the prosecution of an inebriate who had brought herself within the criminal law, on condition that she should assent to her committal to a retreat. Clauses providing for compulsory committal will be found in Lord Herschell's Inebriates Bill.

Form No. 3.—See Sched. ii., *post.*

Any two justices may attest.

Two justices of the peace.—Any two justices of the peace may attest the application. Under sec. 3 of the principal Act (see *ante* p. 952), justice meant a justice having jurisdiction under the Summary Jurisdiction Act in the place where the matter requiring his cognisance arose. The difficulty of finding two such justices was, however, an obstacle to the efficacy of the statute, and the requisition was repealed by sec. 3 of the Act of 1888. Most of the advocates of fresh inebriates legislation contend that the attestation of a single justice should be sufficient.

Applications heard in private.

Unless they have satisfied themselves.—Applications under this section appear to have been generally heard in private.

Unless discharged.—See secs. 15 and 18, *post.* There ought to be a provision in this section for the case of removal under sec. 8, *ante.*

Authorised by licence.—See sec. 19, *post.*

May be detained, and recaptured if he escapes (sec. 26, *post*).

Need for extension to two years.

Shall not exceed . . . months.—There is a strong case for the extension of this period as proposed by the Departmental Committee of 1892 (*ante* p. 951), and by Lord Herschell's Bill, to two years. The twelve months' maximum is too short in many cases for a cure to be effected.

Licensees of retreats to send notice of reception.

11. Every licensee of a retreat under this Act shall, within two clear days after the reception of any person received therein under this Act, send a copy of the application of such person for admission under which such person is so received by any such licensee to the clerk of the local authority and to the Secretary of State.

Within.—See *ante* p. 117.

Clear days.—See *ante* p. 178.

The application.—See sec. 10, *ante.*

The local authority.—See Sched. i., *post.*

Secretary of State.—See definition of, in sec. 3, *ante.*

Knowing and wilful failure on the part of a licensee to comply with this provision is an offence against the Act (see sec. 23, *post*).

Power of discharge.

12. Any person admitted into any retreat under this Act may, at any time thereafter, be discharged by the order of a justice, upon the request in writing of the licensee of the retreat, if it shall appear to such justice to be reasonable and proper.

Discharged.—As to discharges by Secretary of State, see sec. 15, *post;* and by Judge of High Court or County Court, see sec. 18, *post.*

A justice—having jurisdiction under the Summary Jurisdiction Act in the place where the retreat is situated. The repeal of this limitation in the definition of justice in sec. 3 is restricted to the attestation of applicants for admission to retreats.

Sec. 13.

Inspection of Retreats.

Inspector and Assistant Inspector of Retreats may be appointed by the Secretary of State.

13. The Secretary of State may from time to time appoint such person as he shall think fit, who may hold office during his pleasure, and shall be styled "the Inspector of Retreats."

The Secretary of State may also, if it appears to him and to the Commissioners of Her Majesty's Treasury necessary for the due execution of this Act, from time to time appoint a fit person as "Assistant Inspector of Retreats," who shall also hold office during his pleasure, and every person so appointed shall have such of the powers and duties of the Inspector of Retreats as the Secretary of State may from time to time prescribe.

The Secretary of State may assign to the Inspector of Retreats and Assistant Inspector of Retreats such salaries or remuneration and allowances as he may, with the consent of the Commissioners of Her Majesty's Treasury, think proper; the said salaries, remuneration, and allowances, and the expenses of the Inspectors of Retreats, and Assistant Inspectors of Retreats, in carrying out the provisions of this Act, to such amount as is allowed by the Commissioners of Her Majesty's Treasury, shall be paid out of moneys provided by Parliament in that behalf.

The Secretary of State.—See definition of, in sec. 3, *ante.*

The Inspector of Retreats.—Dr. H. W. Hoffmann was appointed Inspector of Retreats on 7th June 1880.

As to inspection by, see sec. 15, *post;* reports by, sec. 16, *post.*

Assistant Inspector of Retreats.—No appointment to this office has been made.

Licence to bear stamp. Fees to be accounted for to local authority.

14. Every licence granted in pursuance of this Act shall be subject to a duty, and be impressed with a stamp of five pounds, and ten shillings for every patient above ten whom it is intended to admit into the retreat, and every renewal of a licence shall be impressed with a stamp of the same amount. The said sums shall be deemed to be stamp duties and be under the management of the Commissioners of Inland Revenue; and all enactments for the time being in force relating to stamp duties and to dies, plates, and other implements provided for the purpose of stamp duties, including all enactments relating to forgery and frauds relating to stamp duties, shall apply accordingly. All expense incurred by the local authority in connection with any application for the granting, renewing, or transferring of such licence shall be borne by the applicant, together with the stamp and fee for the licence; and all fees for licences and for searches, if any, under this Act, shall be paid over to the clerk for the local authority.

Shall be deemed, i.e. shall be conclusively taken to be (see *ante* p. 138).

Inspection of retreats.

15. Every retreat shall, from time to time, and at least twice in each year, be inspected by the Inspector or Assistant Inspector

of Retreats. The Secretary of State may at any time, on the recommendation of the Inspector or Assistant Inspector of Retreats, or in his own discretion, order the discharge of any person detained in any retreat. Sec. 16.

Inspected.—See rule 4 of the Rules for the Management of Retreats, etc., *post.*

Inspector.—See sec. 13, *ante.*

Assistant Inspector.—See sec. 13, *ante.*

The Secretary of State.—See definition of in sec. 3, *ante.*

Discharge.—As to discharge on application of licensee, see sec. 12, *ante;* by Judge, see sec. 18, *post.*

Annual return by Inspector.

16. The Inspector of Retreats shall, in the month of January in each year, present to the Secretary of State a general report setting forth the situation of each retreat, the names of the licensees, and the number of habitual drunkards who have been admitted and discharged or who have died during the past year, with such observations as he shall think fit as to the results of treatment and the condition of the retreats. The Secretary of State shall lay such report, together with the rules, before Parliament.

The Inspector of Retreats.—See sec. 13, *ante.*

The Secretary of State.—See definition of in sec. 3, *ante.*

A general report.—As to special recommendations by the Inspector, see sec. 15, *sup.*, and sec. 22, *post.*

The rules.—See sec. 17, *inf.*

Rules as to management of retreats.

17. The Secretary of State may from time to time make rules for the management of a retreat, and may from time to time cancel or alter such rules.

Any person who contravenes or fails to comply with any of such rules for the management of a retreat shall be deemed to be guilty of an offence against this Act.

A printed copy of rules purporting to be the rules of a retreat, signed by the Inspector or Assistant Inspector of Retreats, shall be evidence of such rules of the retreat.

The Secretary of State.—See definition of in sec. 3, *ante.*

Rules.—The first rules were made on 1st January 1880. They are appended to the first of the Inspector's Reports (1881, c. 354). Additional rules were made on 10th August 1883 (cp. 4th Report, 1884, c. 4196). These were superseded on 10th August 1888 (cp. 9th Report, 1889, c. 5841) by the rules now in force (see *post* p. 973).

Any person . . . Act.—*Semble*, only the knowing or wilful contravention is penal (see sec. 23, *post*). If this is so, "shall be deemed" means "shall be taken to be unless and until the contrary is proved" (see note to sec. 14). As to prosecutions, see secs. 28, 29, *post.* *Semble*, only knowing or wilful contravention penal.

Inspector or Assistant Inspector.—See sec. 13, *ante.*

18. A Judge of the High Court of Justice, on an application *ex parte* at Chambers, or a County Court Judge within whose district the

Sec. 18. Judge of High Court of Justice, etc., may make orders to inspect.

retreat is situated, may at any time, by order under his hand, authorise and direct any person or persons to visit and examine a person detained in a retreat under this Act, and to inquire into and report on any matters which such Judge may think fit in relation to the person so detained. The Judge, on receiving such report, may, if he shall think fit, order the discharge of any person so detained from any such retreat.

Jurisdiction in Scotland.

A County Court Judge.—This jurisdiction is in Scotland to be exercised by the sheriff (sec. 35, subs. (4), *post*), which includes sheriff-substitute (sec. 35, subs. (1), *post*).

Fee of medical practitioner.

Visit and examine.—The Judge would have power to order the applicant to pay the fee of any medical practitioner visiting and examining a patient under this section.

Discharge.

Discharge.—A case is given in the evidence taken by the Departmental Committee of 1892[1] of a discharge of a patient—the wife of a publican—under this section by a County Court Judge, on her husband's application. The grounds of the application were that the wife was better, that the applicant needed her help in the management of his business, and that he was unable to continue the payments. The authorities of the retreat opposed the application, offering to keep the woman without any payment at all; but it was granted. The woman unfortunately relapsed into drunkenness almost immediately after her discharge.

Leave of Absence from Retreat.

Permission that person detained may reside out of retreat.

19. A justice of the peace, at the request of a licensee of a retreat, may, at any time after the admission into a retreat of an habitual drunkard, by licence under his hand permit such habitual drunkard to live with any trustworthy and respectable person named in the licence willing to receive and take charge of him for a definite time for the benefit of his health.

Such a licence shall not be in force for more than two months, but may at any time before the expiration of that period be renewed for a further period not exceeding two months, and so from time to time until the habitual drunkard's period of detention has expired.

A justice of the peace—having jurisdiction in the place where the retreat is situated (see note to sec. 12, *ante*).

"Two months."

Two months.—As to when the period of absence is included in, and when excluded from, the computation of the period of detention in a retreat, see secs. 20 and 21, *post*. "Month" means calendar month (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3).

Renewed.—As to forfeiture of, see sec. 21, *post*; as to revocation of, see sec. 22, *post*.

Absence to be reckoned in time of detention.

20. The time during which an habitual drunkard is absent from a retreat under such a licence shall, except where the licence is forfeited or revoked as hereinafter provided, be deemed to be part of

[1] 1893, c. 7008, Ans. 583-96.

the time of his detention in such retreat. Where such licence is forfeited or revoked, the time during which such habitual drunkard was so absent from the retreat shall be excluded in computing the time during which he may be detained in the retreat.

The time . . . licence.—See sec. 19, *sup.*
Forfeited.—See sec. 21, *inf.*
Revoked.—See sec. 22, *inf.*
Deemed, i.e. conclusively taken to be (see *ante* p. 138).
The time of his detention.—See sec. 6, *ante.*

Habitual drunkard may forfeit leave of absence.

21. An habitual drunkard absent from a retreat under such a licence, who escapes from the person in whose charge he is placed as aforesaid, or who refuses to be restrained from drinking intoxicating liquors, shall be considered ipso facto to have forfeited the licence, and may be taken back to the retreat as hereinafter provided. An unauthorised absence from a retreat of a person ordered to be detained therein shall not be excluded in computing the time during which he may be detained.

Absent . . . licence.—See sec. 19, *ante.*
Escapes.—As to escape of habitual drunkard from retreat, see sec. 26, *post.*
Intoxicating liquors.—As to meaning of, see notes to sec. 3; definition of "habitual drunkard," *ante* p. 953.
Forfeited.—Where a licence is forfeited, the time of absence is excluded from the computation of the time of detention (sec. 20, *sup.*).
Taken . . . hereinafter provided.—See sec. 26, *post.*
Unauthorised absence.—As distinct from escape.

Revocation of leave of absence.

22. Any such licence may be revoked at any time by the Secretary of State on the recommendation of the Inspector or Assistant Inspector of Retreats, or by the justice of the peace by whom such licence may have been granted, by writing under his hand, and thereupon the habitual drunkard to whom the licence related shall return to the retreat.

Any such licence.—See sec. 19, *ante.*
Revoked.—Where a licence is revoked the time of absence is excluded from the computation of the time of detention (sec. 20, *ante*).
The Secretary of State.—See definition of in sec. 3, *ante.*
The Inspector or Assistant Inspector.—See sec. 13, *ante.*
The justice of the peace.—See note to sec. 19, *ante.*

Recapture, how to be dealt with.

Shall return.—There is no express provision in the Act for the recapture of an inebriate who refuses or fails to return after the revocation of his licence. Possibly, however, such a case could be dealt with under sec. 26, *post*, as an escape from a retreat.

Offences.

Offences by licensees of retreats.

23. If any licensee of any retreat knowingly and wilfully fails to comply with the provisions of this Act, or neglects or permits to be neglected any habitual drunkard placed in the retreat in respect

Sec. 24.

of which he is licensed, or does anything in contravention of the provisions of this Act, he shall be deemed guilty of an offence against this Act.

"Knowingly and wilfully."

Knowingly and wilfully.—It is conceived that these words are to be imported into sec. 17, *ante*.

Deemed, i.e. conclusively taken to be (see *ante* p. 138).

An offence against this Act.—As to penalty for, see sec. 28, *post*; prosecutions for, see sec. 29, *post*; appeals, see sec. 30, *post*. As to offences by habitual drunkards, see sec. 25, *post*.

Offences by officers, servants, and other persons.

24. If any person does any of the following things :—

(1) Ill-treats, or, being an officer, servant, or other person employed in or about a retreat, wilfully neglects, any habitual drunkard detained in a retreat;

(2) Induces or knowingly assists an habitual drunkard detained in a retreat to escape therefrom;

(3) Without the authority of the licensee or the medical officer of the retreat (proof whereof shall lie on him) brings into any retreat, or, without the authority of the medical officer of the retreat, except in case of urgent necessity, gives or supplies to any person detained therein, any intoxicating liquor, or sedative narcotic, or stimulant drug or preparation,

he shall be deemed guilty of an offence against this Act.

An officer, servant, etc.—Every attendant and servant is to be duly informed of the offences specified in the Acts, and of the penalties attached to the commission thereof. They are also to be furnished with a copy of the "Regulations and Orders" authorised by the inspector (*v. inf.*) and the licensee is to prosecute every attendant offending against the Acts or the rules, and in case of conviction to dismiss the offender from his service.[1]

"Wilfully neglects."

Wilfully neglects.—The licensee is also guilty of an offence against the Act if he knowingly and wilfully neglects any patient, or permits him to be neglected (see sec. 23, *sup.*; and see notes to sec. 322 of the Lunacy Act 1890, *ante*).

Escape.—As to recapture of patient who escapes, see sec. 26, *post*.

The medical officer.—See sec. 6, *ante*.

Intoxicating liquor.

Intoxicating liquor . . . preparation.—The specific enumeration of these different articles supports the view suggested in the notes to the definition of "habitual drunkard" in sec. 3, *ante*, that "intoxicating liquor where it is used alone means alcohol, or possibly some other recognised and commonly-used intoxicant, such as ether or methylated spirits." A patient is not to take any such preparation without the special written authority of the medical officer (see r. 10, *post*).

Prosecutions under this section.

The proprietors of two public-houses near Westgate having persisted in supplying patients under the Act with intoxicating liquor, although repeatedly warned not to do so by the licensee of the retreat, the inspector recommended

[1] Rule 12, *post*.

a prosecution. Both cases were placed in the hands of the Treasury Solicitor.

In one case the evidence was not considered technically sufficient to convict, and no summons was issued, but the Treasury Solicitor was instructed to warn the landlord of the public-house in question that a repetition of the offence would lead to prosecution.

The other case was brought before the magistrates, but the local solicitor who conducted the case neglected to produce evidence that the persons served with drink were patients under the Act residing in a licensed retreat at the time, and the case was dismissed.[1]

Deemed, i.e. conclusively taken to be (see *ante* p. 138).

An offence, etc.—See sec. 23, and notes, *ante.*

Offences by habitual drunkards while detained in retreats.

25. If an habitual drunkard, while detained in a retreat, wilfully neglects or wilfully refuses to conform to the rules thereof, he shall be deemed guilty of an offence against this Act, and shall be liable upon summary conviction to a penalty not exceeding five pounds, or, at the discretion of the Court, to be imprisoned for any period not exceeding seven days, and at the expiration of his imprisonment (if any) for such offence he shall be brought back to such retreat, there to be detained for curative treatment until the expiration of his prescribed period of detention in the retreat, and in reckoning such period the time during which such person was in prison shall be excluded from computation.

"The rules."

The rules, i.e. either the model rules (*post*), or the "Regulations and Orders" of the retreat (see r. 13, *post*). The "Regulations and Orders" may require patients to work; but great difficulty has been found in enforcing this part of the regimen of retreats. There was a specific subsection dealing with this point in Lord Herschell's Bill (sec. 2, subs. (4).)

Deemed, i.e. conclusively taken to be (see *ante* p. 138).

An offence, etc.—As to offences against the Act by licensees, etc., see secs. 23, 24, 28.

Summary conviction.—See sec. 29, *post.*

His prescribed period.—See sec. 10, *ante.*

In reckoning . . . computation.—See secs. 20 and 21, *ante.*

Apprehension of habitual drunkard escaping from retreat.

26. If an habitual drunkard escapes from a retreat, or from the person in whose charge he has been placed under licence as hereinbefore mentioned, it shall be lawful for any justice or magistrate having jurisdiction in the place or district where he is found, or in the place or district where the retreat from which he escaped is situate, upon the sworn information of the licensee of such retreat, to issue a warrant for the apprehension of such habitual drunkard at any time before the expiration of his prescribed period of detention; and such habitual drunkard shall, after apprehension, be brought before a justice or magistrate, and may, if such justice or magistrate should so order, be remitted to the retreat from which he had so escaped.

[1] 4th Report, 1884, c. 4196, par. 3.

Sec. 27.

Escapes.—An habitual drunkard who refuses or fails to return to a retreat after the revocation of his licence under sec. 22, *ante*, may possibly be held to have escaped, and be dealt with under this section. The escape of an habitual drunkard is not an offence against the Act. An officer, etc., of a retreat who induces or wilfully assists his escape is, however, guilty of an offence (see sec. 24, subs. (2), *ante*).

Query whether refusal or failure to return, an escape.

Or from the person . . . mentioned.—See sec. 19, *ante*.

Any justice . . . situate.—But for the alternative contained in this clause only a justice or magistrate having jurisdiction in the place where the matter requiring his cognisance arose, viz. in the district where the retreat is situate, could issue the warrant. See definition of "justice" in sec. 3, *ante*. The alternative jurisdiction exists only in the case of escape from a retreat (see sec. 11, subs. (1) of Lord Herschell's Bill).

Objection of licensees to requirements of section.

Upon the sworn . . . escaped.—The licensees of retreats complain that the requirements of this section—the swearing of an information, the finding of a magistrate with jurisdiction, and the issue of a warrant—frequently occupy so much time, that the escaped patient cannot be recaptured.

Proceedings on death of person detained.

27. In the case of the death of any person detained in any retreat a statement of the cause of the death of such person, with the name of any person present at the death, shall be drawn up and signed by the principal medical attendant of such retreat, and copies thereof, duly certified in writing by the licensee of such retreat, shall be by him transmitted to the coroner and to the registrar of deaths for the district, and to the clerk of the local authority, and to the person by whom the last payment was made for the deceased, or one at least of the persons who signed the statutory declaration under section ten of this Act.

Penalty for neglect or omission.

Every medical attendant who shall neglect or omit to draw up and sign such statement as aforesaid, and every licensee of a retreat who shall neglect or omit to certify and transmit such statement as aforesaid, shall be deemed guilty of an offence against this Act.

The death.—As to register of deaths, see r. 2, *post*. As to notices of, see r. 3, *post*.

Principal medical attendant.—See sec. 6, *ante*.

Local authority.—See Sched. i., *post*.

The person . . . deceased.—See notes to sec. 9, *ante*.

One at least.—See sec. 10, *ante*.

An offence, etc.—As to penalty for, see sec. 28, *post*. As to prosecution for, see sec. 29, *post*. As to appeals, see sec. 30, *post*.

Penalty for offence against Act.

28. Any person, not being an habitual drunkard detained in a retreat, who is guilty of an offence against this Act to which no other penalty is affixed, shall be liable, on summary conviction, to a penalty not exceeding twenty pounds, or, at the discretion of the Court, to be imprisoned for any term not exceeding three months with or without hard labour.

Not being.—Offences by habitual drunkards are specially dealt with in sec. 25, *ante*.

An offence, etc.—See secs. 17, 23, 24, 27, *ante.*

To which no other penalty.—No other specific penalty is provided except in the case of offences by habitual drunkards. These words probably mean by any other statute or at common law.

Summary conviction . . . Court.—See definition of "court of summary jurisdiction" in sec. 3, *ante.*

Summary Jurisdiction Acts.

29. The Summary Jurisdiction Acts shall apply to all offences in respect of which jurisdiction is given to any court of summary jurisdiction by this Act, or which are directed to be prosecuted, enforced, or made before a court of summary jurisdiction, or in a summary manner, or upon summary conviction.

Any court of summary jurisdiction.—See definition of in sec. 3, *ante.*

Appeals.

30. In England, if any person thinks himself aggrieved by any conviction or order of a court of summary jurisdiction, he may appeal therefrom, subject to the conditions and regulations following:—

(1) The appeal shall be made to the next court of general or quarter sessions for the county, borough, or place in which the cause of appeal has arisen, held not less than fifteen days and (unless adjourned by the court) not more than four months after the conviction or order appealed from;

(2) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the clerk of the court of summary jurisdiction appealed from of his intention to appeal, and of the ground thereof;

(3) The appellant shall, within three days after such notice, enter into a recognisance before a justice with two sufficient sureties conditioned personally to try the appeal, and to abide the judgment of the appellate court thereon, and to pay such costs as may be awarded by the court, or give such other security, by deposit of money or otherwise, as the justice allows;

(4) Where the appellant is in custody any justice having jurisdiction in such complaint may, if he thinks fit, on the appellant entering into such recognisance or giving such other security as to such justice shall seem sufficient, release him from custody;

(5) The appellate court may adjourn the appeal; and, on the hearing thereof, they may confirm, reverse, or modify the decision of the court of summary jurisdiction appealed from, or remit the matter, with the opinion of the appellate

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court thereon, to the court of summary jurisdiction, or make such other order in the matter as the court thinks just, and if the matter be remitted to the court of summary jurisdiction, the said last-mentioned court shall thereupon re-hear and decide the matter in accordance with the order of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

In England.—As to Scotland and Ireland, see secs. 35 and 36, *post.* As to this section, see notes to sec. 327 of Act of 1890, *ante.*

Aggrieved.—See notes to sec. 301, subs. (1) of the Lunacy Act 1890, *ante.*

Fifteen days, i.e. in all, Sundays, etc., included (see *ante* p. 112).

Four months.—"Month" means calendar month (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3).

Within.—See *ante* p. 117.

Limitation of actions.

31. Any action against any person for anything done in pursuance or execution or intended execution of this Act shall be commenced within two years after the thing done, and not otherwise.

Notice in writing of every such action and of the cause thereof shall be given to the intended defendant one month at least before the commencement of the action.

Prosecution does not relieve from civil proceedings.

Any action.—A prosecution under the Act does not relieve the defendant from any liability to civil proceedings.

Anything done, etc.—*Semble*, this section is now superseded by the Public Authorities' Protection Act 1893 (56 & 57 Vict. c. 61), cited *ante* p. 697.

Miscellaneous.

Query [whether section superseded by Public Authorities' Protection Act 1893.

Time under 9 & 10 Vict. c. 66. s. 1.

32. The time during which a person is detained in a retreat shall for all purposes be excluded in the computation of time mentioned in section one of the Act of the ninth and tenth years of the reign of Her present Majesty, chapter sixty-six, intituled "An Act to amend the laws relating to the removal of the poor," as amended by any other Act.

The time.—See sec. 10, *ante.*

Section one . . . Act.—Under that section no person is to be removed from a parish in which he or she has resided for five years. By sec. 32 of this Act the time of detention in a retreat is excluded from the computation of the time mentioned in that section.

No forfeiture for non-fulfilment of condition of residence.

33. Persons who hold their estates, being other than ecclesiastical benefices, subject to any condition of residence shall not incur any forfeiture through being detained in any retreat.

Ecclesiastical benefices.—Cp. sec. 2 of the Clergy Discipline Act 1892 (55 & 56 Vict. c. 32).

34. The Secretary of State may, subject as herein mentioned, prescribe the fees to be paid in carrying out the provisions of this Act. Sec. 34. Fees to be prescribed.

Secretary of State.—See notes to sec. 3, *ante.*
Herein mentioned.—See sec. 14, *ante*, as to stamp duties.

Scotland.

35. In the application of this Act to Scotland the following provisions shall have effect:— Application of Act to Scotland.

(1) The term "sheriff" includes sheriff-substitute;

(2) All penalties for offences under this Act shall be recovered, with expenses, in a summary manner before the sheriff at the instance of the procurator-fiscal of court;

(3) An appeal against a conviction or order of a court of summary jurisdiction under this Act shall be to the Court of Justiciary at the next circuit court, or where there are no circuit courts, to the High Court of Justiciary at Edinburgh, and not otherwise; and such appeal may be made in the manner and under the rules, limitations, and conditions contained in the Act of the twentieth year of the reign of King George the Second, chapter forty-three, "for taking away and abolishing heritable jurisdictions in Scotland," or as near thereto as circumstances admit; with this variation, that the appellant shall find caution to pay the fine and expenses awarded against him by the conviction or order appealed from, together with any additional expenses awarded by the court dismissing the appeal;

(4) The jurisdiction and authority conferred on a county court judge under this Act in England may in Scotland be exercised by a sheriff.

Ireland.

36. In the application of this Act to Ireland the following provisions shall take effect:— Application of Act to Ireland.

(1) An appeal against a conviction or order of a court of summary jurisdiction shall, within the police district of Dublin metropolis, be made in manner prescribed or allowed by the Acts regulating the powers and duties of justices of the peace for such district, and as regards other places in Ireland in accordance with the provisions of the Petty Sessions (Ireland) Act 1851, and any Act or Acts affecting or amending the same, or as nearly in accordance with their several Acts in each case as the circumstances will permit; 14 & 15 Vict. c. 93.

Sec. 36.

(2) All fees for licences and searches, and other fees, if any, under this Act, shall be paid over to the clerk of the local authority, and in every case in which such clerk is a clerk of the peace, or temporary clerk of the peace, shall be receivable by him for his own use, but in every case in which such clerk is a clerk of the Crown and peace, shall be accounted for by him in the same way as fees payable to him under the provisions of the County Officers and Courts (Ireland) Act 1877.

40 & 41 Vict c. 56.

The SCHEDULES referred to in the above Act.

Sections 4, 5, *ante*.

THE FIRST SCHEDULE.

Part I.

England.

District.	Local Authority.	Clerk of Local Authority.
Borough or city corporate having a separate court of quarter sessions.	The justices of the peace for the borough or city in special sessions assembled.	The clerk to the justices of the borough or city.
County, riding, division, or part of a county, liberty, or other place, not being a county of a city, or a county of a town, or a borough or city corporate as aforesaid.	The justices of the peace for the county or place in general or quarter sessions assembled.	The clerk of the peace for the county or place, or the person acting as such, or a deputy duly appointed.

Part II.

Scotland.

District.	Local Authority.	Clerk of Local Authority.
County, including any town or place which does not return or contribute to return a member to Parliament.	The justices of peace for the county in general or quarter or special sessions assembled.	The clerk of the peace.
Burgh which so returns or contributes.	The provost and magistrates.	The town clerk.

PART III.

Ireland.

District.	Local Authority.	Clerk of Local Authority.
Borough having a recorder.	The recorder.	The clerk of the peace, or temporary clerk of the peace, or clerk of the Crown and peace.
Quarter sessions division of a county, including county of a city and county of a town.	The justices of the peace for the county sitting in the court of quarter sessions of the quarter sessions division.	The clerk of the peace, or temporary clerk of the peace, or clerk of the Crown and peace.

THE SECOND SCHEDULE.

Secs. 4, 6, 10, *ante.*

FORM No. 1.

APPLICATION FOR LICENCE OF RETREAT.

The Habitual Drunkards Act 1879.

To the justices of the peace for the county [*or* borough] of [ ] [*or as the case may be*].

I, the undersigned, hereby apply for a licence for the house described below, as a retreat for the reception of male [*or* female, *or* male and female] persons being habitual drunkards within the meaning of the above-mentioned Act, to be detained and treated as patients therein.

And I, the undersigned, undertake to reside in the house and give my personal attention to the management, care, and treatment of the patients.

Witness (Signed)

*Name*_____ *Name*_____

*Address*_____ *Address*_____

*Description*_____ *Description*_____

[*House to be described with the following* (*among other*) *particulars; and a plan on a scale of not less than one-eighth of an inch to a foot to accompany the description and be referred to therein:—*

(a) *Dimensions of every room.*
(b) *Arrangements for separation of sexes.*
(c) *Quantity of land available for exercise and recreation of patients.*
(d) *Extent of applicant's interest in the house.*]

RULES.

1. An application may include two or more houses belonging to the same person or persons, provided no one of the houses is separated from another or others of them otherwise than by land in the same occupation and by a road, or in either of those modes.

2. The application is to be made not less than ten days before the sessions or meeting at which it is to be considered.

3. The clerk of the local authority is to give notice of the application having been made, by advertisement published in a newspaper circulating in the district of the local authority six days at least before the same sessions or meeting.

FORM No. 2.

LICENCE.

The Habitual Drunkards Act 1879.

County [*or* borough] of { This is to certify that in pursuance of the above-mentioned Act the justices of the peace acting in and for the county [*or* borough] of [*or as the case may be*], in general or quarter (or special) sessions assembled upon the application of *A.B.*, a copy of which application is indorsed on this licence, have licensed and do hereby license the said *A.B.* to use the house described in that application for the reception of persons being habitual drunkards, as follows: namely, male [*or* female, *or* male and female] patients for calendar months from this date.

Dated this day of 18 .

(Signed)_____

Clerk of the Local Authority.

RULES.

1. A fee of ten shillings is to be paid for the licence.

2. The clerk of the local authority, within ten days after a licence has been granted, is to give notice of the granting thereof by advertisement published in a newspaper circulating in the district of the local authority, and is to send a copy of the licence to the Secretary of State.

FORM No. 3.

REQUEST FOR RECEPTION INTO RETREAT.

The Habitual Drunkards Act 1879.

To

I, the undersigned, hereby request you to receive me as a patient in your retreat at in accordance with the above-mentioned Act, and I undertake to remain therein for

at least, unless sooner duly discharged, and to conform to the regulations for the time being in force in the retreat.

The above named signed this application in our presence, and at the time of his [*or* her] so doing we satisfied ourselves that he [*or* she] was an habitual drunkard within the meaning of the Habitual Drunkards Act 1879, and stated to him [*or* her] the effect of this application, and of his [*or* her] reception into the retreat, and he [*or* she] appeared perfectly to understand the same.

Dated this day of

justices of the peace for the county [*or* borough] of

Witness's
Name in full.
Address.
Description.

Applicant's
Name in full.
Address.
Description.

APPENDIX.

THE INEBRIATES ACTS 1879 AND 1888.

RULES FOR THE MANAGEMENT OF RETREATS LICENSED UNDER THE ABOVE ACTS.

I, the Right Honourable Henry Matthews, being one of Her Majesty's principal Secretaries of State, by virtue of the power conferred on me by section 17 of the Act 42 & 43 Vict. c. 19, do hereby revoke the Rules for Retreats made on the 1st day of January 1880 by the Right Honourable Sir Richard Assheton Cross, G.C.B., then one of Her Majesty's Secretaries of State, and also the additional rules made on the 10th day of August 1883 by the Right Honourable Sir William Vernon Harcourt, then one of Her Majesty's principal Secretaries of State, and in their place I do hereby make the following rules for the management of retreats licensed under the above Acts :—

Plans.

1. The plan or plans submitted to the justices according to the Form No. 1 of the Second Schedule of the Habitual Drunkards Act 1879, shall be hung up in some conspicuous place in the retreat.

On the plan or plans the rooms to be appropriated to the use of

the "habitual drunkards," hereinafter termed "patients," shall be distinguished from those used by the licensee and his family.

Books.

2. The licensee of the retreat shall provide and keep the following books, namely, "The Register of Admissions" and "The Register of Discharges and Deaths."

These books shall respectively be in the forms, and contain entries of the particulars given and indicated in the Schedules A and B hereto annexed.

He shall also provide a "Case Book," in which the medical attendant, or the licensee, if acting as medical attendant, shall enter the name, sex, and previous occupation of every patient admitted into the retreat, and whether he or she is married, single, or widowed.

Subsequent entries shall be made therein recording the progress of each case, and also all bodily ailments, injuries, or accidents happening to the patients; the medicines and alcoholic stimulants (if any) administered; and the special treatment adapted for the cure of the patient, with the result. Such entries shall be made monthly or oftener. Should any physical coercion or restraint be employed, a full detail of the circumstances shall at once be entered in this "Case Book."

The licensee shall also provide a book to be called the "Visitors Book," with which shall be bound up Queen's Printer's copies of the above Acts, which shall be for the use of the inspector, and the inspector shall enter therein such observations and report as he may think fit; and a copy of all such entries shall, within three days after the date thereof respectively, be transmitted by the licensee to a Secretary of State by post.

The licensee shall keep a list of all patients residing in his house, or who may be absent on licence, together with the payments made by or for each of them.

Notices.

3. In addition to the notices required by the Acts, the licensee shall, within two clear days after the death or discharge of any patient in the retreat, send by post notice of such death or discharge to the clerk of the local authority and to a Secretary of State.

The licensee shall, within two clear days, send by registered letter to the inspector notice of every licence permitting a patient to be temporarily absent from the retreat, and such notice shall give the name and address of the person with whom the patient is to reside during such absence.

He shall also, within the same time, send notice by registered letter to the inspector of every escape of a patient, and, if subsequently re-taken, of the return of such patient to the retreat.

Within.—See *ante* p. 117.
Two clear days.—See *ante* p. 178.

Inspection.

4. All parts of the retreat shall at all times be open to the inspector, and shall be shown to him at his visitation, and every patient detained in the retreat shall be produced to him. The licensee shall give full and true information to the inspector in reply to such inquiries as he may deem necessary, and lay before him all books, registers, lists, and documents by the Acts or hereby required to be kept, and at all times furnish him with copies of any entries which he may require.

The licensee and the medical attendant respectively shall, whenever required by the inspector, furnish him with a special report upon the mental and bodily condition and conduct with reference to abstinence from intoxicating liquor, or otherwise, of any patient on the register of the retreat.

Habitual Drunkards being or becoming Insane.

5. If any patient admitted into or detained in the retreat shall be found to be, or shall while in the retreat become insane, the licensee shall immediately give notice thereof by registered letter to the inspector, to the person by whom the last payment for such patient was made, and to one at least of the persons who signed the statutory declaration under section 10 of the Habitual Drunkards Act 1879, and also to the relieving officer of the union or parish in which the retreat is situated, to the intent that the patient so being or becoming insane may forthwith be placed under proper care and control as a lunatic.

Separation of Sexes.

6. The licensee shall, in cases where patients of both sexes are received in a retreat, make due provision for the separation of the sexes at night, and at all but defined hours in the daytime.

Visits of Friends.

7. Patients in a retreat may at all reasonable times be visited by their relatives and friends: Provided always, that if in any case the licensee shall think that the visit of any particular person or persons would at any particular time, or generally, be prejudicial to the patient proposed to be visited, or would be likely to hinder the cure of such patient, he may prohibit such visit.

In the case of a prohibited visit, the licensee shall give his reasons for refusal, in writing, to the visitor, and an entry of such reasons shall be made in the "Case Book," and a copy thereof sent to the inspector within 24 hours.

The inspector may, at any time, give an order in writing under

his hand for the admission to any patient of any relative or friend of such patient of either sex (or of any medical practitioner whom any such relative or friend of such patient shall desire to be admitted to the patient), and such order of admission may be for a single admission or for an admission for a limited number of times, or for admission generally at all reasonable times.

The licensee may, if he shall think fit, direct that interviews between patients and visitors of the opposite sex shall take place in the presence of an official or attendant of the retreat.

Patients' Letters.

8. The licensee shall post or forward all letters written by the patients of his retreat according to the intentions of the writers, unless he shall have good reason to know that they are written for the purpose of obtaining intoxicating liquor or other prohibited articles, or of promoting the escape of a patient.

He shall also deliver unopened all letters and parcels addressed to his patients unless he has good grounds for believing that they contain prohibited articles, in which case he may require the patient to open such suspected letter or parcel in his presence.

Any suppressed letters or parcels must be forwarded to the inspector within two days, to be dealt with as the Secretary of State shall direct.

Provided always, that all letters written by a patient and addressed to a Secretary of State, to any Judge of the High Court of Justice, to a County Court Judge, to the local authority or clerk thereof, or to the inspector, shall be forwarded unopened and without delay.

Secretary of State.—See notes to sec. 3, *ante.*
The local authority.—See First Schedule, *ante.*

Public-Houses.

9. A patient detained in a retreat shall not without written permission from the licensee of the retreat enter any public-house or other house where intoxicating liquors are sold.

Intoxicating Liquors.

10. Without special written authority from the medical attendant of a retreat a patient shall not take any intoxicating liquor, or sedative narcotic, or stimulant drug, or preparation.

Prosecutions.

11. It shall be the duty of the inspector to report to the Secretary of State any serious offence against the provisions of the Acts, or

these Rules, which may be brought to the notice of the inspector, with a view to take such action in relation thereto as the Secretary of State may direct.

Secretary of State.—See sec. 3, *ante.*

Attendants.

12. Every attendant and servant shall be duly informed of the offences specified in the Acts, and of the penalties attached to the commission thereof. They shall also be furnished with a copy of the "Regulations and Orders" authorised by the inspector, and it shall be the duty of the licensee to prosecute every attendant offending against the Acts or these Rules, and in case of conviction to dismiss the offender from his service.

Regulations and Orders.

13. "Regulations and Orders" (not inconsistent with these Rules) for the domestic arrangements of the retreat and the management and treatment of the inmates thereof, shall, within one month from the granting of the license, be drawn up by the licensee, and by him be submitted to the inspector; and such "Regulations and Orders," when approved by the inspector, shall be adopted and strictly observed in the conduct of the establishment.

HENRY MATTHEWS.

Whitehall, 10th August 1888.

Within.—See *ante* p. 117.

One month.—"Month" means calendar month (Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3).

Shall be observed.—See notes to sec. 226 of Act 1890, *ante.*

B

RULES, CIRCULARS, ETC.

MECHANICAL RESTRAINT

Regulation, dated 17th April 1895, made by the Commissioners in Lunacy under Section 40, Subs. (6) of the Lunacy Act 1890, as to Instruments and Appliances for the Mechanical Restraint of Lunatics.

Regulation.

In pursuance of subsection 6 of the above section of the Lunacy Act 1890,[1] the Commissioners in Lunacy, by this regulation under their common seal,[2] do hereby determine that "mechanical means of bodily restraint"[3] shall include all instruments and appliances whereby the free movements of the body or of any of the limbs of a lunatic are restrained or impeded, but that the following instruments and appliances only shall be made use of for such purpose:—

1. A jacket or dress, laced or buttoned down the back, made of strong linen, with long outside sleeves fastened to the dress only at the shoulders, and having closed ends to which tapes may be attached for tying behind the back when the arms have been folded across the chest.
2. Gloves without fingers, fastened at the wrists with buttons or locks, and made of strong linen or chamois leather, padded or otherwise.
3. If the continuous bath be employed, the use of a cover to the open bath, with an aperture therein for the patient's head, shall be deemed to be mechanical means of restraint.
4. The wet or dry pack. If, and when, either is used, the patient shall be swathed in sheets and blankets only, the outer sheet being, if necessary, sewn or pinned. No straps or ligatures of any kind shall be used, and the patient shall be released for necessary purposes at intervals not exceeding two hours.

4. This rule was suggested by Weir's case, 1895, 394.

The dry pack in which he was restrained is thus described in the Report of the Lunacy Commissioners, dated the 26th October 1894:—

"The apparatus consists of a blanket and five broad leather straps, connected at intervals by loops with two strips of webbing about six

[1] *Ante* p. 195.
[2] As to seal of Commissioners, and when necessary, see sec. 152, *ante*.
[3] Sec. 40, subs. (1), *ante*.

feet in length. The patient is laid upon the blanket, which is drawn over him and folded so as to envelop him tightly from head to foot. He is then laid upon one of the strips of webbing, and the other is brought down the centre of the front of his body, and the straps are drawn sufficiently tight to restrain the movements of all his limbs and keep his arms close to his sides. The upper part of the blanket is then sewn back to prevent interference with respiration by the nose and mouth, and the two lower ends of the webbing are tied between the feet.

"It altogether depends upon the degree in which the straps are tightened whether or not there is interference with the necessary movements of the chest for respiratory purposes, and with the circulation."

With reference to this the Commissioners reported :—

"That in our opinion the use of the dry pack in (this) form ought not to be permitted in the treatment of insane patients. Even in the hands of discreet and humane persons it is an unnecessarily severe form of restraint, and when not under most careful supervision and control is liable to impose upon the patient severe suffering, and even dangerous results.

"It renders him incapable of movement, and any indiscreet tightening of the straps may lead to dangerous interference with the respiratory and circulating functions.

"The older form of packing, which simply consisted in the envelopment of the patient in sheets and blankets, was comparatively harmless, although needing the control of judicious employment and careful supervision. The leather straps have added a serious danger to a form of restraint which was already not unattended by it."

5. Sheets or towels when tied or fastened to the sides of a bed or other object. When these are used only for the purpose of forcible feeding, and merely held by attendants, and not tied or fastened, their use shall not be considered to come under the head of mechanical restraint.

It is essential to the safe employment of any of these forms of restraint, except No. 2, that the patient be visited frequently by a medical officer, that he be kept under continuous special supervision by an attendant, and that under no circumstances he be left unattended; and it is hereby so ordered.

The Commissioners also recommended (*v. ubi sup.*), although the new regulation, it will be observed, only gives partial effect to the recommendations :

"That mechanical restraint should not be employed in any institution for the insane except upon the direct authority and direction in each case of the medical superintendent or, in his absence, of the deputy superintendent.

"That whenever complete mechanical restraint is used in any case the patient should not only be placed under continuous observation, both by night and day, by skilled attendants, and be visited at short intervals by members of the medical staff, but that frequent opportunities should be afforded to the patient of attending to the calls of nature and changing a position which from continuance may cause severe suffering.

"That the appliances for mechanical restraint should be kept in charge of some member of the medical staff, and that their first application at least should be made under his personal superintendence as a means of medical treatment.

"That the subsequent imposition of restraint in any case should invariably be effected in the presence of the head attendant, and that he should immediately report to the medical superintendent or his deputy both its use and any struggle with a patient which may take place at such time or upon any other occasion. It being also the duty of the charge attendants to inform the head attendant immediately of such occurrences."

To these recommendations may be added the concluding paragraph in the Report of Mr. Gully, Q.C., and Dr. Savage, in Weir's case :—

"We would further suggest that General Rule No. 12 of the (Holloway) Sanatorium, which prohibits mechanical restraint without a special medical order, should be amended by providing that such orders should be in writing; that a mechanical restraint order book should be kept with counterfoils, and that both order and counterfoil should state the precise time at which and the period for which restraint is ordered, such period not to exceed four hours in any one order, and that the form of order should contain short printed general instructions to the attendants as to food and exercise, and as to the course to be followed in case symptoms of collapse or other emergencies should supervene.

"We also think the rules should provide that a doctor should be present whenever a patient is put under mechanical restraint, and that the patient in every such case should be continuously watched."

The Commissioners direct that at each visit of Commissioners or a Commissioner to an asylum, hospital, or licensed house, or to a single patient, all instruments and mechanical appliances which may have been employed in the application of bodily restraint to a lunatic since the last preceding visit, be produced to the visiting Commissioners or Commissioner by the superintendent, resident medical officer, or resident licensee, or the person having charge of the single patient.

It will be seen that the section requires that in every case where mechanical restraint is applied, a medical certificate describing the mechanical means used, and stating the grounds upon which the certificate is founded, be signed in asylums and hospitals by the medical superintendent, in licensed houses by the resident or visiting medical practitioner, in workhouses by the medical officer, and in the case of single patients, by the medical attendant; that a full record of every case of restraint be kept *from day to day;* and that a copy of such records and certificates be sent to the Commissioners in Lunacy at the end of every quarter.

In framing this Regulation, in which they have defined the "mechanical means" which may alone be used in the imposition of restraint, the Commissioners in Lunacy have merely discharged the duty cast upon them by the enactment quoted above; and they desire to guard themselves most strictly against the supposition that they

have thereby given any greater countenance to the employment of this form of treatment than they have hitherto shown.

While recognising, as the enactment recognises, the possible occurrence of cases in which its employment may be necessary and consistent with humanity, they remain of opinion that the application of mechanical restraint should always be restricted within the narrowest possible limits, that it should not be long continued without intermission, and that it should be dispensed with immediately that it has effected the purpose for which it was employed.

This Regulation shall come into operation on the 1st day of July 1895, on and from which day the Regulation of the 9th April 1890 shall cease to have effect, and a copy shall be inserted at the beginning of every register of mechanical restraint.

Sealed by order of the Board.

G. Harold Urmson,
Secretary.

19 Whitehall Place, London, S.W.,
the 17th day of April 1895.

THE RULES IN LUNACY 1892–93.

Preliminary.

Rule 1.

Short title.

1. These Rules may be cited as the Rules in Lunacy 1892.

The Rules in Lunacy 1893 are to be read as one with the Rules in Lunacy 1892 (r. 13, Rules in Lunacy 1893).

The Rules in Lunacy 1892 referred to in the Schedule to the Rules in Lunacy 1893, are annulled to the extent mentioned in the second column thereof by r. 12 of the Rules in Lunacy 1893.

Commencement of Rules.

2. These Rules shall come into operation on the 1st of March 1892, and as from that date the Rules in Lunacy 1890, and the Orders in Lunacy of the 5th March 1891 and of August 1891, shall be annulled.

The Rules in Lunacy 1893 came into operation on 1st July 1893 (r. 13, Rules in Lunacy 1893).

Pending proceedings.

3. Pending proceedings shall be carried on according to the provisions of these Rules, so far as possible, and subject thereto according to the practice heretofore subsisting, and in case of doubt as to the mode of procedure, in such of those modes as the Masters direct. The provisions of these Rules shall be subject to variation by special order in any case, and shall apply only where no express directions are given by any special order concerning any of the matters provided for in these Rules, or so far as such directions do not extend. In all matters not provided for by these Rules, the mode of procedure heretofore in force shall continue to be followed.

"Month" means calendar month.

4. Where in any order the time for doing any act or taking any proceeding is limited by months, and where the word "month" occurs in any

Rule 5.

document which is part of any legal procedure under these Rules, such time shall be computed by calendar months unless otherwise expressed.[1]

Exclusion of Sundays, etc.

5. Where any limited time, less than six days from or after any date or event, is appointed or allowed by these Rules or any order for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time.[2]

Time expiring on Sunday or close day.

6. Where the time for doing any act or taking any proceeding under these Rules or any order expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.[3]

Number of days how computed.

7. In any case in which any particular number of days, not expressed to be clear days,[4] is prescribed by these Rules or any order, the same shall be reckoned exclusively of the first day, and inclusively of the last day.

Power to enlarge or abridge time.

8. The Judge in Lunacy (in these Rules called the Judge) and the Masters may enlarge or abridge the time appointed by these Rules or fixed by any order enlarging time for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case requires, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

Forms.

9. The forms in the Schedule may be used in the cases in which they are applicable, with such variations as the circumstances require.[5]

The Masters.

Masters to make orders.

10. The Masters may make orders as regards administration and management, and they may direct by whom and in what manner the costs of any proceedings are to be paid.[6]

R. L. 1893, r. 4. Undertaking to be given by person appointed to do any act or exercise any power.

4. Where an order is made by the Masters under that portion of the Lunacy Act 1890 which relates to management and administration,[7] the Masters shall, unless for special reasons they think fit to dispense therewith, require the person appointed by the order to do any act or exercise any power to give an undertaking to the following effect, with such modifications as the circumstances of the case shall require:

Undertaking.

I, A.B., of [insert address and description] undertake to apply all such moneys as I may receive belonging to the said , or his [or her] estate, and all moneys which I may receive on his [or her] account, in such manner as the Masters in Lunacy shall direct, and to account for such moneys when required; and further, to give such security for the due application of and accounting for such moneys as may be required by any order of the Masters, and to obtain and

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[1] See Interpretation Act 1889 (52 & 53 Vict. c. 63), sec. 3.

[2] Sundays, etc., are counted where more than six days are allowed. Cp. *ex parte Viney*, 1877, 4 Ch.D. 794.

[3] Cp. *ex parte Saffery*, 1877, 5 Ch.D. 365, cited *ante* p. 312, note 1.

[4] See *ante* p. 164.

[5] See sec. 339 of Act of 1890, *ante*.

[6] See *ante* p. 334.

[7] See secs. 116-131 of Act of 1890, *ante*.

send every six months to the Masters a report from a duly qualified medical man as to the mental and bodily condition of the said ; and further, every six months to give notice in writing to the Masters of the then place of abode of the said ; and further, to use my best endeavours to produce the said and to allow him [or her] to be visited by any Chancery Visitor or other person authorised by the Masters to visit him [or her], and to give such directions as the Masters may require to facilitate such visits.

Rule 11.

11. Any person affected by any order, decision, or certificate of a Master may appeal therefrom to the Judge without a fresh summons, upon giving notice of appeal within eight days from the date of the order, decision, or certificate complained of, or such further time as may be allowed by the Judge or Master. The notice of appeal shall be given to the persons, if any, interested in supporting the order, decision, or certificate, and a copy thereof shall, within the aforesaid period of eight days, be left at the Masters' office, and the Masters shall thereupon bring the matter before the Judge.[1]

Appeal from orders of Masters. Forms 2, 3.

12. The Masters may communicate personally with the Judge with regard to any matter pending before them, when any point appearing to them to be novel or difficult arises, and they shall, when requested by the Judge so to do, attend to give any information or assistance he may require.

Masters to communicate with and attend the Judge.

13. Such one of the Masters or their clerks as the Masters, with the concurrence of the Lord Chancellor, direct shall attend in Court upon the hearing of any application, and shall take a note of the order made by the Court.

Attendance in Court.

14. *The Masters shall inquire into the circumstances of any delay in the conduct of proceedings before them or in proceeding upon their orders, certificates, and directions, and for that purpose may call before them all parties concerned, and may certify accordingly where it seems to them expedient.*[2]

Masters to inquire into delay. Repealed by R. L. 1893, Sched.

15. Wherever the Masters are referred to in these Rules, they shall be deemed to be referred to jointly and severally, and everything to be done by or before the Masters may be done by or before them or either of them, but all applications relating to the same person or his property shall, so far as convenient, be dealt with by the same Master.[3]

Masters may act jointly and severally.

Mode of Application.

16. Applications for an order for inquisition,[4] except in cases under sec. 100 of the Lunacy Act 1890,[5] shall be made by petition. The petition shall be signed by the petitioner and attested by a solicitor.

Application for order for inquisition. Form 4.

17. Applications for a traverse[6] and for a supersedeas,[7] and applications under that portion of the Lunacy Act 1890 which relates to "Vesting Orders,"[8] shall also be made by petition.

Application for traverse and supersedeas and for vesting orders.

[1] See *ante* p. 334.
[2] See r. 2 of Rules of 1893, *post*.
[3] See *ante* p. 284, note 1, and sec. 111, subs. (2) of Act of 1890, *ante*.
[4] See *ante* p. 259.
[5] See *ante* p. 304.
[6] See *ante* p. 310.
[7] See *ante* p. 320.
[8] See secs. 133-143 of Act of 1890, *ante*.

Rule 18.

Petitions for inquisition, traverse, and supersedeas, to be brought before Judge.

18. Every petition for an order for inquisition, for a traverse, and for a supersedeas, and the evidence in support thereof, shall be filed in the Masters' office, and shall be brought before the Judge without previous consideration by the Masters.[1]

Other applications to be by summons.

19. All other applications under the Lunacy Acts 1890 and 1891, or under those Acts and also in the Chancery Division, shall, unless the Judge or Masters shall in any particular case otherwise direct, be made by summons at Chambers before the Masters.

Applications under Lands Clauses Acts, Settled Estates Acts, Settled Land Acts, and other Acts.

20. In all cases in which the Judge has, under the Lands Clauses Acts, the Settled Estates Act 1877, the Settled Land Acts 1882 to 1890, or any other enactment, jurisdiction to make an order upon petition affecting the property of a lunatic, the application for the order shall, unless the Judge or Master in any particular case otherwise directs, be made by summons at Chambers before the Masters.[2]

Costs of petitions not to be allowed.

21. If in any case in which the application is not by these Rules or by the Judge or Masters directed to be made by petition, a petition is presented without the direction of the Judge or Masters, no further costs shall be allowed than would be allowed upon a summons.

In matters not relating to administration and management Masters to prepare minutes of order for the Judge.

22. All applications, except those by these Rules directed to be brought before the Judge without previous consideration by the Masters, shall be considered by the Masters, and, if the application does not relate to administration and management, the Masters shall prepare the minutes of such order, if any, as they think should be made, and shall bring the application with the evidence and the minutes of the proposed order before the Judge.[3]

Matters to be brought before Judge out of Court.

23. All matters which require to be brought before the Judge, shall be brought before him out of Court. The Judge may make an order upon any summons or petition without attendance of counsel, solicitors, or parties, or after such attendance, or may adjourn the summons or petition into Court, or refer the same to the Masters for inquiry, or further inquiry, upon any matter. Any matter may be adjourned from Court for consideration by the Judge out of Court.[4]

Power to order or dispense with service.

24. The Judge and Masters respectively may direct any person to be served with notice of any application, and may dispense with service on any person.[5]

Only one summons to be issued on the same application.

25. Every application by summons to be brought before the Judge shall be brought before him upon the original summons, and until the application is finally disposed of, it shall not be necessary to issue any further summons upon any appointment. Where an application by summons is directed to be served on any party, it shall not be necessary to issue a fresh summons, but the original summons may be served with such amendments (if any) as the circumstances require.

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[1] See *ante* p. 260.
[2] See sec. 120 of Act of 1890, *ante*.
[3] See *ante* p. 260. As to cases excepted, see r. 18, *sup*.
[4] See *ante* p. 260.
[5] See *ante* p. 260. As to service of order dispensing with presence of lunatic, see *re Lanwarne*, 1881, 30 W.R. 759.

The Inquisition.

Rule 26.

26. The notice to an alleged lunatic of a petition for an order for inquisition shall be by service on him of a copy of the petition, with a notice thereon endorsed signed by the petitioner or a solicitor. Such notice shall be in the Form 5 in the Schedule, or to that effect.[1]

Notice of petition for inquisition. Form 5.

27. The notice to an alleged lunatic of a report of the Commissioners under sec. 100 of the Lunacy Act 1890, shall be in the Form 6 in the Schedule, or to that effect.[2]

Notice of report of Commissioners.

28. No order shall be made upon any such petition or report until after the expiration of seven clear days from service upon the alleged lunatic of notice of the petition or report.[3]

Order not to be made until seven days after notice.

29. Such notice shall be served on the alleged lunatic by being delivered to him personally, or where personal service cannot be effected or is inexpedient, then by being delivered to some adult inmate at the dwelling-house or usual or last-known place of abode of the alleged lunatic within the jurisdiction, and an affidavit of service, stating particularly the time, place, and mode of service, and where there has not been personal service, the grounds of such service not having been made, shall be filed with the Masters.[4]

Service of notice.

30. An alleged lunatic may either by notice filed with the Masters at any time before the consideration of the petition or report, or by himself, his counsel, or solicitor, upon such consideration, demand an inquisition before a jury. A notice demanding a jury shall be signed by the alleged lunatic and attested by a solicitor.[5]

How demand of a jury to be made. Form 7.

Proceedings after Inquisition.[6]

31. Subject to the provisions of these Rules as to inquiries respecting the next of kin and heir-at-law of a lunatic, the party having the conduct of the proceedings shall, immediately after inquisition found, take out a summons to inquire into the matters following:—

Summons for inquiries after inquisition found.

(*a*) The lunatic's age, position in life, and residence.
(*b*) The nature of his lunacy.
(*c*) Who are his next of kin and heir-at-law.
(*d*) Who ought to be appointed committee of his person and of his estate.
(*e*) Of what his property consists, and the particulars thereof.
(*f*) The amount of his income.
(*g*) In what manner, and at what expense, and by whom, and where, he has been maintained; what should be allowed for his past maintenance, what, if anything, is due, and to whom, in respect thereof, and to whom and out of what fund the same ought to be paid.
(*h*) What should be allowed for future maintenance, when the allowance ought to commence, and out of what fund it should be paid.

[1] See *ante* p. 275.
[2] See *ante* p. 304.
[3] *Ib.* As to clear days, see *ante* p. 164.
[4] See *ante* p. 275.
[5] See *ante* p. 276.
[6] See *ante* pp. 335 *et seq.* Claim for past maintenance simply a debt, *re Harris*, 1880, 49 L.J. Ch. 327.

Rule 32.

Masters' order.

32. The Masters may make such order on the summons in the last preceding Rule mentioned as they think expedient.

Inquiries as to debts.

33. The Masters may, when it seems to them expedient, inquire what undisputed debts (if any) are due from the lunatic, and to whom and whether the same or any of them ought to be paid, and out of what property, and they may make orders for the settlement or payment thereof and for the compromise of any disputed claim against the lunatic or his estate.

Inquiries as to dealings with lunatic's estate before inquisition.

34. The Masters may make such inquiries as they think fit respecting any dealings with the lunatic's estate and the application of the same prior to the date of the inquisition, and respecting the state and condition of the lunatic at the time of such dealings, whether a summons for any such inquiry is pending before them or not.[1]

Inquiries as to property of lunatic out of jurisdiction.

35. The Masters may inquire whether any person resident out of the jurisdiction has by the law of the place where such person resides been found or declared a lunatic, and whether his estate or any part thereof has been vested in a curator or other person appointed for the management thereof according to such law, and whether or not any property within the jurisdiction is vested in the lunatic, and what is his interest therein.[1]

No inquiry as to next of kin and heir if fees not payable.

36. Where an order is made exempting the property of a lunatic from payment of fees, the Masters shall not, during the continuance of the exemption, inquire respecting his next of kin and heir-at-law, unless they think it expedient.[1]

Masters may defer and limit and dispense with inquiry as to next of kin and heir.

37. The Masters may in any case defer an inquiry respecting next of kin and heir-at-law, or carry on the inquiry to such limited extent only and under such restrictions as they think expedient, and they may direct that persons claiming to be next of kin or heir-at-law be left to make out their claim at their own expense, and may in any case, if they think it expedient, wholly dispense with the inquiry.[1]

Strict proof of pedigree may be dispensed with.

38. Where the Masters are of opinion that it is expedient that strict proof of pedigree should not be gone into, they may dispense with the same to such extent and in such manner as they think fit, and may require and receive such evidence as they think sufficient respecting the family and next of kin or heir-at-law.[1]

Power to dispense with or disallow attendance of heir or next of kin.

39. The Masters may dispense with and disallow the attendance on the proceedings of the heir-at-law or of all or any of the next of kin, either wholly or except at their own expense, or except upon special leave first obtained, and such notice only of attending the proceedings shall be given as the Masters shall direct.[1]

Masters to determine who is to attend the proceedings.

40. Subject to the provisions of these Rules, the Masters shall once in the matter of each lunatic so found by inquisition, and may as often as they think it expedient, determine which, if any, of the next of kin, and what other persons, if any, are to attend the proceedings or any particular proceeding, and only those persons (if any) to whom the Masters have given leave to attend shall be entitled to notice of or be allowed to attend on any proceeding at the cost of the estate, except by special leave first obtained.[1]

[1] See *ante* p. 337. As to payment of debts, see *re Leigh's Estates*, 1871, 40 L.J. Ch. 442.

41. Where an infant being one of the next of kin has no guardian, the Masters may appoint a proper person to be his guardian for the purposes of the lunacy, and the person so appointed shall have the same powers, authorities, and discretion as a guardian ad litem appointed by the Chancery Division of the High Court. The Masters may revoke any such appointment and appoint another person to be guardian.[1]

Rule 41.

Power to appoint guardian of infant.

42. The Masters, if it seems to them expedient, may consolidate and carry on together similar proceedings before them in the matters of several persons being members of the same family, and may in any case use in the matter of one member of a family evidence filed in the matter of any other member of the same family.[1]

Power to consolidate matters and to use evidence in other matters.

43. The Masters may direct that several parties appearing before them by different solicitors shall appear by the same solicitor, or that several parties appearing before them by the same solicitor shall appear by different solicitors. Where parties, directed to appear by the same solicitor, cannot agree upon the solicitor to represent them, the Masters may nominate the solicitor; and if any of such parties insists upon appearing by a different solicitor, he shall do so at his own cost.[1]

Power to determine what solicitors are to represent the parties.

44. The Masters may receive any deed or security belonging to a lunatic, and may by order or certificate give liberty for payment or transfer into Court of any money or stock belonging to a lunatic.

Power to receive deeds and direct lodgment of securities.

45. Any person, in whose custody or control any testamentary paper of the lunatic is, shall be at liberty to deposit the same in the office of the Masters upon oath, as they may direct, there to remain for safe custody.[2]

Liberty to deposit will of lunatic with Masters.

46. On the death of a lunatic or a supersedeas being issued, the Masters may make an order for payment, transfer, or delivery of any funds in Court belonging to the lunatic, or any documents or effects relating to or forming part of his estate, deposited in their office for safe custody, to the person entitled thereto.

On death of lunatic funds in Court and effects deposited with Masters to be paid and delivered.

47. The Masters may, on being satisfied of a lunatic's death, open and read any document deposited with them purporting or alleged to contain any testamentary disposition made by him, for the purpose of ascertaining who is therein nominated executor thereof, and whether any direction is contained therein concerning his funeral or place of interment, and may deliver the document to the proper officer of the Probate Division to be dealt with according to law.

On death of lunatic Masters may open will.

Applications as to Property of Persons of Unsound Mind not so found by Inquisition.

48. In the case of applications respecting the property of any person of unsound mind not so found by inquisition, seven clear days' notice of the application shall be given to such person by service on him of a copy of the summons, with a notice endorsed thereon signed by the applicant or a solicitor.

Notice of applications as to property of person of unsound mind not so found by inquisition. Form 8.

[1] See *ante* p. 339.

[2] As to opening will on lunatic's death, see r. 47, *inf.*, and Appx. D, "Death of lunatic."

Rule 49.

Such notice shall be in the Form 8 in the Schedule, or to that effect, and shall be served in the manner in which under these Rules notice of a petition for an order for inquisition is to be served. The summons shall be returnable not less than seven clear days from its date.

Affidavit of service to be filed.

49. An affidavit of service stating particularly the time, place, and mode of service, and, where there has not been personal service, the grounds of such service not having been made, shall be filed with the Masters.

Notice of objection. Form 9.

50. The person so served may file a notice of objection to the application.

Power to dispense with notice.

51. The Masters may, if they think fit, dispense with notice to such person of any application after the first.

Masters may visit persons to whom any application relates.

52. For the purpose of any application before the Masters relating to the property of a person not found lunatic by inquisition, the Masters may, if they think fit, visit such person or require him to be produced before them as they direct.

Notice of application to next of kin or others.

53. The Masters may, if they deem it expedient, direct that notice of the application be given to any of the next of kin of the person to whom the application relates, or to any other person, and only such persons as the Masters direct to be served with notice shall be entitled to attend before them.

Temporary provision for maintenance.

54. In any case where, pending the appointment of a person to exercise in relation to the property of a person of unsound mind not so found by inquisition any of the powers of a committee of the estate, it appears to the Masters desirable that temporary provision should be made for the expenses of the maintenance, or other necessary purposes or requirements of the lunatic, or any member of his family, out of any cash or available securities belonging to him in the hands of his bankers or of any other person, the Masters shall be at liberty by certificate to authorise such banker or other person to pay to the person to be named in such certificate such sum as they certify to be proper, and may by such certificate give any directions as to the proper application thereof by that person, who shall be accountable for the same as the Masters direct.[1]

Provisions as to lunatics so found by inquisition to apply. Repealed by R. L. 1893, Sched.

55. In all cases not otherwise herein specially provided for, the provisions of these Rules relating to lunatics so found by inquisition and the other general provisions of these Rules shall apply to applications relating to the property of persons of unsound mind not so found by inquisition, *except that the certificate referred to in Rule 32 shall not be made, and that the Masters may make orders appointing persons to exercise, in relation to the property of persons of unsound mind not so found by inquisition, the powers of a committee of the estate.*

Applications as to Persons mentioned in sec. 116 (1) (*d*) *of the Lunacy Act* 1890, *not being lunatic.*[2]

Applications as to persons incapable through disease or age of managing their affairs. Forms 10, 11.

56. The provisions of these Rules as to persons of unsound mind not so found by inquisition shall apply to applications respecting the property of any person who though not a lunatic is through mental infirmity arising from disease or age incapable of managing his affairs.

[1] See sec. 130 of Act of 1890, *ante.*

[2] See sec. 116 of Act of 1890, *ante.*

Rule 56.

1. Upon any application under sec. 116 of the Lunacy Act 1890, the Masters may, if they consider it desirable for the care of the person or for the management of the estate or otherwise in the interest of any lunatic or alleged lunatic, direct such person as they think fit to present a petition for an order for inquisition as to the lunatic or alleged lunatic; and if such direction is not complied with within ten days, or such further time as the Masters allow, the Masters may direct such petition to be presented by the official solicitor, and the official solicitor shall present the same accordingly.

R. L. 1893, r. 1. Masters may direct a petition for inquisition to be presented.

2. (1) If it appears to the Masters that there is undue delay in any matter before them, or if the Masters are otherwise dissatisfied with the conduct of any proceedings, or with the mode in which any order made or direction given by the Masters is being carried out, they may summon before them the party having the conduct of the proceedings, or any other person appearing to be answerable, to explain the delay or other conduct with which they are dissatisfied, and may make such order as the circumstances require; and for the purposes aforesaid the Masters may direct the official solicitor to summon the persons whose attendance is required, and to conduct any proceedings and carry out any directions; and the Masters may, if they think fit, appoint the official solicitor to act as solicitor in such matter in the place of any solicitors previously acting.

(2) An order of the Masters under this Rule shall be subject to appeal to the Judge in accordance with the provisions of Rule 11 of the Rules in Lunacy 1892.

R. L. 1893, r. 2 (1), (2). Powers of Masters in case of undue delay.

3. Any costs incurred by the official solicitor in relation to any proceedings taken by him pursuant to the directions of the Masters shall be paid by such parties or out of such funds as the Masters direct.

R. L. 1893, r. 3. Costs of official solicitor.

Vesting Orders.[1]

57. Applications under that portion of the Lunacy Act 1890 which relates to "Vesting Orders" may be made—

Application for the appointment of new trustees or for vesting orders.

(*a*) Where the application is for the appointment of new trustees, or relates to property subject to a trust, by any person beneficially interested in the property, whether under disability or not, or by any duly appointed trustee thereof.

(*b*) Where the application relates to any property subject to a mortgage, by any person beneficially interested in the equity of redemption or in the mortgage money, whether under disability or not.

5. The Chancery Visitors shall, upon the request of the Masters, visit and report as to any persons with reference to whom or to whose estate an application is pending before or an order has been made by the Masters.

R. L. 1893, r. 5. Chancery Visitors to visit and report upon request of Masters.

The application.—The application is made by petition (r. 17, *ante*) supported by evidence on affidavit of proposed trustee's fitness and consent,[2] and of facts alleged in petition.[3]

The appointment of new trustees.—The lunatic is incapable of acting as a trustee.[4] The power of appointment may be exercised even although the deed or will creating the trust contains a power of appointment in the event of lunacy.[5] See forms of orders for, Seton, 5th ed. pp. 1071, 1072.

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[1] See secs. 133-143 of Act of 1890, *ante*.

[2] *Battersby's Trust*, 1852, 16 Jur. 900; *Grundy* v. *Buckeridge*, 1853, 22 L.J., N.S., Ch. 1007. It is not sufficient in affidavit of fitness for deponent merely to describe himself as "gentleman," the occupation must be stated (*re Orde*, 1883, 24 Ch.D. 271). Here new trustees were appointed after the death of the lunatic to get rid of funds standing in Court to the credit of the lunacy.

[3] Affidavits filed in a cause have been admitted in petition in the same matter (*re Pickance's Trusts*, 1853, 10 Ha. App. xxxv.); and devolution of title has been allowed to be traced in affidavits without baptismal certificates or affidavits of identity (*re Hoskins*, 1859, 4 De G. & J. 436).

[4] *Re East*, 1873, L.R. 8 Ch. 735; *re Chell*, 1883, 31 W.R. 898. Cp. *re Green*, 1875, L.R. 10 Ch. 272; *re Vicat*, 1886, 33 Ch.D. 103.

[5] *Re Davies*, 1851, 3 Mac. & G. 278; *re Cooper's Settlement*, 1856, 25 L.J., N.S., Ch. 685.

Rule 58.

The original number of trustees need not be adhered to.[1] A single trustee will not be appointed, however, where there were more trustees than one originally.[2]

Under the old practice, where one of the trustees of a fund became of unsound mind, the Court objected to vest the trust property in the remaining trustees unless the fund was immediately divisible.[3] But see now *ante* p. 452.

Any person beneficially interested.—E.g. the purchaser of property sold by direction of the Court (*Ayles* v. *Cox*,[4] *Rowley* v. *Adams*[5]); or the plaintiffs in an administration action (*re Wragg*[6]). A contingent title to a beneficial interest is sufficient (*re Sheppard's Trusts*[7]); and the committee of a lunatic trustee (*re Wheeler*[8]) or *cestui que trust*—but in the latter case *not* on his own behalf (*re Bourke*[9])—may apply.

Subject to a mortgage.—The petition should be presented by the committee—*re Wheeler*[8]—or, on his default,[9] by the mortgagor.

Title of application. Form 1 (*f*).

58. The application shall be intituled in the matter of the trust or mortgage, and of the particular lunacy, and in the matter of the Lunacy Act 1890.

Shall be intituled.—The order will be made in Lunacy as well as in Chancery—

(1) Where the estate of a lunatic trustee or mortgagee is to be affected.[10]

(2) Where one trustee is lunatic and the petition is for the appointment of new trustees in his place and that of others.[11]

The order will be made in Lunacy only—

(1) Where one trustee of a sum of stock has become lunatic and the petition is for a vesting order in the other trustees.[12]

(2) Where there has been a judgment for partition.[13]

The order may be made in Chancery only—

(1) In the case of an infant trustee of unsound mind.[14]

(2) Where a lunatic trustee is out of the jurisdiction.[15]

(3) Where only the appointment of a new trustee is required.[16]

(4) Where a person having power to appoint is a lunatic, and no vesting order is needed.[16]

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[1] Cp. *re Tunstall's Will*, 1835, 4 De G. & S. 421; *re Boycott*, 1856, 5 W.R. 15; *Bulkeley* v. *Eglinton*, 1855, 1 Jur., N.S., 994; *re Bergholt*, 1853, 2 Eq. Rep. 90; *Emmet* v. *Clarke*, 1861, 7 Jur., N.S., 404.

[2] *Re Ellison's Trusts*, 1856, 2 Jur., N.S., 62; *re Porter's Trusts*, *ib.* 349; *re Dickinson's Trusts*, 1855, 1 Jur., N.S., 724; *re Reynault*, 1852, 16 Jur. 233.

[3] *Re Martyn*, 1884, 26 Ch.D. 745; and cp. *re Stokes*, 1872, L.R. 13 Eq. 333; *re Harford's Trust*, 1879, 13 Ch. D. 135; *re Colyer*, 1881, 50 L.J., N.S., Ch. 79.

[4] 1853, 17 Beav. 584.

[5] 1851, 14 Beav. 130.

[6] 1863, 1 De G. J. & S. 356.

[7] 1862, 8 Jur., N.S., 711.

[8] 1852, 1 De G. M. & G. 434.

[9] 1864, 2 De G. J. & S. 426. The Court may make order for the transfer of a mortgage vested in a lunatic (*re Nicholson*, 1887, 34 Ch.D. 663; *re Peel*, 1886, 55 L.T., N.S., 554); or the lunatic's interest may be sold under sec. 117, *ante* (*re Brown*, 1884, 50 L.T., N.S., 373; and see Seton, 5th ed., p. 1064).

[10] *Re Ormerod*, 1858, 3 De G. & J. 249; *re Mason*, 1875, L.R. 10 Ch. 273; *re White*, 1870, L.R. 5 Ch. 698; *re Stewart*, 1860, 8 W.R. 297; *re Boyce*, 1864, 4 De G. J. & S. 205; *re Porter's Will*, 1855, 3 W.R. 583; *re Cuming*, 1869, L.R. 5 Ch. 72. The order must formally reappoint the new trustee (*re Pearson*, 1877, 5 Ch.D. 982; *Jeffryes* v. *Drysdale*, 1861, 7 Jur., N.S., 667).

[11] *Re Pearson*, 1877, 5 Ch.D. 982; *re Chell*, 1883, 49 L.T., N.S., 196.

[12] *Re Watson*, 1881, 19 Ch.D. 384; *re Ray*, 1883, 47 L.T., N.S., 500; *re Batho*, 1888, 39 Ch.D. 189; and cp. *re Nash*, 1881, 16 Ch.D. 503; and *re Wacher*, 1882, 22 Ch.D. 535; *re Hoare*, 1888, W.N. 1888, 94.

[13] *Re Sherard*, 1863, 1 De G. J. & S. 421. Where there has been no action the order may be made in Lunacy only (*re Owen*, 1869, L.R. 4 Ch. 782).

[14] See *ante* p. 462; *re Machen*, 1808, Shelf. Lun. 290.

[15] *Re Gardner's Trusts*, 1878, 10 Ch.D. 29; *re Duce's Trust*, 1882, 30 W.R. 759 (where, however, the order was made in Lunacy *and* in Chancery). The Court will not appoint as trustee a person resident out of the jurisdiction (*re Guibert*, 1852, 16 Jur. 852).

[16] *Re Vickers*, 1876, 3 Ch.D. 112; *re Sparrow*, 1870, L.R. 5 Ch. 662; and see now secs. 128, 129 of Act of 1890, *ante*, and *re Heaphy's Trusts*, 1870, 18 W.R. 1070.

59. The applicant shall serve any such application upon the person or persons who, according to the practice of the Chancery Division of the High Court, would be required or entitled to be served in similar cases.

Rule 59.

Persons to be served.

Shall serve.—Petitions under r. 57 (*a*), *ante* (appointment of new trustees, etc.), should be served on existing trustees,[1] the committee (in the case of a lunatic trustee so found),[2] and *cestuis que trust* (infants by their next friends as well as adults),[3] unless they are very numerous,[4] or the trustees are trustees with a power of sale.[5]

Petitions under r. 57 (*b*), *ante* (mortgage, etc.), by the committee should not be served on the mortgagor,[6] and whether served or not, the mortgagor will not get his costs of appearing.[7]

A petition (*a*) for vesting a lease containing a prohibition against assignment must be served on the reversioner,[8] and (*b*) by a tenant for life must be served on the remainderman (*re Maynard*).[3]

It seems that an order to vest lands subject to an annuity may be made in the absence of the annuitant.[9]

The High Court has jurisdiction to make vesting orders on decree by any Court for sale of lands;[10] and see sec. 138, *ante* p. 458, note 1, and sec. 143, *ante* p. 462.

Orders and Certificates.

60. The Masters shall be provided with an official stamp or seal for the authentication of orders, *certificates*, and other documents, and of amendments therein.[11]

Masters to have an official seal. Repealed by R. L. 1893, Sched., *post.*

6. Orders and other documents issued from the Masters' office shall be sufficiently authenticated by the seal of the Masters' office, and it shall not be necessary to sign the same.

R. L. 1893, r. 6.

Orders and documents to be authenticated by seal.

61. Orders made under the Lunacy Acts 1890 and 1891 shall be drawn up by the Masters and shall be entered *by them* in a proper book to be provided for that purpose.

Orders to be entered by Masters. Repealed by R. L. 1893, Sched., *post.*

62. *Every certificate shall, when the nature of the case so requires, state as concisely as possible the grounds of any recommendation and the circumstances relative thereto.*

Certificates of Masters. Repealed by R. L. 1893, Sched., *post.*

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[1] *Re Sloper*, 1854, 18 Beav. 596.

[2] *Re Saumarez*, 1856, 8 De G. M. & G. 390; *re Wood*, 1861, 7 Jur., N.S., 323; *re Parke's Trusts*, 1863, 8 L.T., N.S., 378; *re Draper's Settlement*, 1854, 2 W.R. 440. *Aliter*, in case of lunatic not so found (*re East*, 1873, L.R. 8 Ch. 735).

[3] *Re Richards's Trusts*, 1852, 5 De G. & S. 636; *re Prescott's Trusts*, 1852, 19 L.T. 371; *re Maynard's Settlement Trusts*, 1852, 16 Jur. 1084; *re Fellow's Settlement*, 1856, 2 Jur., N.S., 62; *re Lonsdale's Trust*, 1850, 14 Jur. 1101; *re Thomas's Trusts*, 1851, 15 Jur. 187. The Court, if possible, will not appoint a *cestui que trust* as trustee (cp. *ex parte Clutton*, 1853, 17 Jur. 988; *re Giraud*, 1861, 32 Beav. 385; *re Clissold*, 1864, 10 L.T., N.S., 642; *ex parte Conybeare's Settlement*, 1853, 1 W.R. 458). A female trustee (a relative of the *cestui que trust*) has been appointed, there being a difficulty in finding any other suitable person to accept the office (*re Berkley*, 1874, L.R. 9 Ch. 720).

[4] *Re Smyth*, 1851, 2 De G. & S. 781.

[5] *Re Blanchard*, 1861, 3 De G. F. & J. 131; *re Wilson*, 1886, 31 Ch.D. 522.

[6] *Re Rowley*, 1863, 1 De G. J. & S. 417.

[7] *Re Phillips*, 1869, L.R. 4 Ch. 629; *re Jones*, 1876, 2 Ch.D. 70.

[8] *Re Farrant's Trust*, 1851, 20 L.J., N.S., Ch. 532; *re Matthew's Settlement*, 1853, 2 W.R. 85.

[9] *Re Winteringham's Trusts*, 1855, 3 W.R. 578. As to purchase of annuity for lunatic, see *Dodd* v. *Wake*, 1852, 5 De G. & S. 228; *Davies* v. *Davies*, 1852, 2 De G. M. & G. 54; *re Ward*, 1860, 6 Jur., N.S., 717; *re Burke*, 1860, 2 De G. F. & J. 124.

[10] *Harrison* v. *Smith*, 1869, 17 W.R. 646; *Herring* v. *Clark*, 1868, L.R. 4 Ch. 167; *re Stamper*, 1882, 46 L.T., N.S., 372.

[11] As to forgery of Masters' seal, see sec. 147 of Act of 1890.

Rule 63.

63. *The Masters shall, so far as possible, prepare their certificates and orders without attendance of solicitors or parties.*

Certificates and orders to be prepared without attendances. Repealed by R. L. 1893, Sched., *post.*

64. *Every certificate, when prepared and settled, shall be signed by the Masters at an adjournment to be made for that purpose, notice of which shall be given to the parties in cases where the certificate has been prepared without any attendance. If the parties consent to the signature of the certificate without any adjournment, the Masters may, if they think fit, sign the certificate as soon as it is prepared and settled.*

Settlement of certificates. Repealed by R. L. 1893, Sched., *post.*

Certificates to be binding unless altered on appeal. Repealed by R. L. 1893, Sched., *post.*

65. *Every certificate shall at the expiration of eight days after signature thereof by the Master, subject in the case of an appeal to any variation directed to be made therein by the Judge upon the hearing of the appeal, be binding on all the parties to the proceedings.*

Numbers to be denoted by figures. Repealed by R. L. 1893, Sched., *post.*

66. In orders, *certificates*, and other documents issued from or brought into the office of the Masters, numbers shall be denoted by figures, and not by words.

Notice of dealings with funds in Court.

67. The Masters may, if they think fit, direct that any money, securities, or effects in Court shall not be paid or transferred out without notice to such person as occasion requires and they direct.

Clerical mistakes and accidental omissions. Substituted by R. L. 1893, r. 7.

68. Clerical mistakes in orders and *certificates* (**other documents**), or errors arising therein from any accidental slip or omission, may at any time be corrected by the Judge or by a Master.

R. L. 1893, r. 11. Change of residence.

11. Every committee of the person of a lunatic so found by inquisition shall, within three days after any change shall have taken place in the residence of the lunatic, send by post to the office of the Visitors of Lunatics, Royal Courts of Justice, London, notice thereof, with the address of the place to which the lunatic has been removed.

Committees of the Estate and Person.

Custody of estate or person may be continued to surviving or continuing committees.

69. Where it appears that several persons ought to be appointed committees of the estate or person, and that it is expedient that one or more of such persons should continue to act after the death or discharge of the others or other of them, the order appointing the committees may direct that the custody of the estate or person shall continue to the surviving or continuing committees or committee.

Masters to approve security.

70. The Masters shall approve the security to be given by the committee of the estate.[1] Such security may be reduced[2] on request to an amount

[1] The security is, in practice, fixed at twice the amount of the gross income and twice the amount of any personal securities over which the committee or receiver might have control.

[2] As to reduction of security, see *ante* p. 355.

corresponding in the judgment of the Masters with the condition of the property of the lunatic and the income thereof. The Masters may also require the security of the committee of the estate to be increased,[1] if in their judgment the circumstances of the case render it desirable.

Money or stock may be brought into Court as security.

71. The Masters may authorise the committee of the estate to give security in the whole or in part by bringing into Court a sufficient sum of money or stock, and they may for that purpose by order give liberty for payment or transfer into Court of any money or stock, and direct how the money is to be invested and the dividends applied, and the Paymaster-General shall give effect to every such order.[2]

Upon fresh security being given previous security discharged.

72. Where a committee enters into a fresh security, upon the same being duly perfected, and upon the balance then due by the committee being paid or secured to the satisfaction of the Masters, the former security shall be discharged.[3]

Committee of estate to pass accounts.

73. The committee of the estate shall[4] annually, or at such longer or shorter periods as the Masters fix, deliver his accounts, or affidavit in lieu of accounts, into the Masters' office, and attend before the Masters at or within such time as the Masters fix, and have his accounts taken and passed, and the Masters shall make to him all just allowances, including an allowance of his reasonable and proper costs, charges, and expenses of passing the account, and those of the next of kin, and other persons (if any) allowed to attend on the passing of the account, at the cost of the estate.[5]

Masters to keep a register of committees and receivers.

74. The Masters shall keep a book or books, in which shall be made, in respect of every committee, receiver, or other person liable to account, entries showing in a tabular form the following particulars, that is to say :—

(1) The title of the matter.
(2) The names of the committees, receivers, or other persons liable to account.
(3) The date fixed for the delivery of accounts, or of affidavits in lieu of accounts.
(4) The date in each successive year when the accounts or affidavits are delivered into the Masters' office.
(5) The date in each successive year when the accounts are passed.
(6) The balance or sum, if any, in each successive year directed to be paid into Court by the committee, receiver, or other person liable to account.
(7) The date fixed for the last-mentioned payment.
(8) The date of the actual payment into Court.
(9) The dates of all orders made in the particular matter, and also such other particulars as the Lord Chancellor may from time to time by writing direct.

Committee to satisfy Masters that sureties are living and solvent.

75. The committee of the estate shall, on each occasion of passing his account, and also whenever the Masters so require, satisfy the Masters that his sureties are living, and that neither of them has been adjudicated bank-

[1] As to increase of security, see *ante* p. 355.
[2] See *ante* p. 354. Security may also be given by guarantee (see *ante* p. 354).
[3] See *ante* p. 356.
[4] See *ante* p. 357.
[5] See *ante* p. 284.

Rule 76.

rupt or compounded with his creditors, and in default thereof the Masters shall require him to enter into fresh security within such time as they fix.

Balances of committee to be paid into Court and invested.

76. The balances certified by the Masters to be due from the committee of the estate on passing his accounts, or so much thereof respectively as the Masters certify to be proper to be paid by him, shall, unless the Masters otherwise direct, be paid by him, at or within such time as the Masters fix, into Court, to the credit of the matter, and the same, when paid in, and any sum of cash in Court to which the lunatic is entitled, or so much thereof respectively as the Masters by their certificate direct, shall, unless the Masters otherwise direct, within such time (if any) as the Masters fix, be laid out in the purchase of such securities for the time being authorised for the investment of cash under the control of the High Court,[1] as the Masters direct, and the dividends on the securities so purchased and all accumulations of dividends shall, unless the Masters otherwise direct, when the same amount to a competent sum, be laid out in like manner without any request for the purpose.

Mode of allowance of account. Repealed by R. L. 1893, r. 8.

77. *The Masters' allowance of the account of a committee shall be signified under the hand of a Master and written under the account, and an order or certificate shall not be made unless it is required with a view to the payment of money into Court or for some other purpose.*

R. L. 1893, r. 8.

8. The Masters' allowance of the account of a committee shall be sufficiently authenticated by the seal of the Masters' office.

Allowance of account to be authenticated by seal.

If balances retained committee to be disallowed salary and to be charged with interest.

78. Where the committee of the estate makes default in bringing in his account, or in having the same passed, or in paying the balance certified to be due from him, or in causing the same or any sum of cash in Court to be laid out, paid, or received, pursuant to any certificate or direction in that behalf, the Masters shall, unless good cause be shown to them to the contrary, not only disallow his salary or remuneration (if any), but shall also charge him with interest at the rate of £4 per cent per annum upon any balance or cash for the time during which the same appears to have been improperly retained in hand or uninvested.

Masters to inquire in certain cases whether a new committee should be appointed.

79. The Masters shall[2] in each of the following cases inquire whether or not it is expedient that a committee or a new committee of the person or of the estate should be appointed, that is to say:—

(*a*) On default of a person approved to be committee of the estate in duly perfecting his security or in duly perfecting a fresh security when required by the Masters.

(*b*) On the death or discharge of a committee, or one of several committees, where the custody does not survive.

(*c*) If a receiving order in bankruptcy is made against a committee or he compounds with his creditors.[3]

(*d*) If a committee absconds or goes to reside permanently abroad.

Appointment of new committee.

80. If it appears that a committee or a new committee ought to be appointed in any of the cases mentioned in the last preceding rule, the Master may make an order appointing a proper person to be such committee or new committee accordingly.

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[1] See R.S.C. 1883, Ord. xxii., r. 17.

[2] See *ante* p. 358.

[3] See *re Barrow*, 1827, Shelf. Lun. 233; *re Chambers*, 1826, *cit. ib.*; *Lloyd* v. *Anon.*, 1772, 2 Dick. 460.

Rule 81.

Accounts to be passed on discharge or death of committee or after supersedeas.

81. Upon the discharge or death of the committee of the estate or upon the issue of a supersedeas or the death of the lunatic, the Masters shall take and pass the account of the committee from his appointment or from the foot of his last account. If a balance is certified to be due from the committee or his estate, he or his legal personal representatives shall pay the same into Court by virtue of the certificate or otherwise within such time as the Masters direct, or in the case of a supersedeas shall pay the same to the person whose lunacy has been superseded, or in the case of the death of the lunatic shall pay the same to the legal personal representatives of the lunatic. If the Masters find a balance due to the committee or his estate, the same shall be paid to him or his legal personal representatives by the new committee out of the lunatic's estate, or in the case of a supersedeas by the person whose lunacy has been superseded, or in the case of the death of the lunatic by his legal personal representatives. Upon payment of the balance, if any, or if no balance is found due, or the taking of the account is not required and may in the opinion of the Masters be properly dispensed with, the security of the Committee shall be discharged.

Procedure where security of committee or receiver is to be discharged. Repealed by R. L. 1893, r. 9.

82. *Where under these Rules, or any special order, the security of a committee of the estate or receiver is to be discharged, then the Masters shall deliver up the bond to be cancelled, or as the case may be, shall by certificate direct the clerk of the Enrolment Department of the Central Office to attend the Master of the Rolls with the enrolment of the recognisance to be vacated, and such clerk shall by virtue of such certificate attend accordingly; and in the case of security having been given in the whole or in part by a sum of money or stock being brought into Court, the Masters may make an order for the payment or transfer in such manner as the Committee requests and as the Masters think proper of the sum of money or stock, and the dividends thereon.*

R. L. 1893 r. 9. Discharge of security.

9. When the security of a committee of the estate, receiver, or other person is to be discharged, the bond shall be delivered up to be cancelled, or in the case of a recognisance, the proper officer shall, upon a direction from the Masters, attend the Masters, who shall thereupon vacate such recognisance in the usual manner; and in the case of security having been given in the whole or in part by a sum of money or stock being brought into Court, the Masters may make an order for the payment or transfer, in such manner as the Masters think proper, of the sum of money or stock, and the dividends thereon.[2]

Receivers.

Appointment of receiver.

83. A receiver may be appointed in any case in which such appointment shall be deemed expedient. Where a receiver is appointed, the person appointed shall, unless otherwise ordered, first give security to be allowed by the Masters duly to account for what he shall receive as such receiver, and to pay the same as the Masters direct, and the person so appointed shall, unless otherwise ordered, be allowed by the Masters a proper salary or allowance.[3]

Provisions as to committees extended to receivers.

84. The provisions of these Rules respecting the committee of the estate, his accounts, payments, allowances, and matters of the like nature, shall extend, so far as applicable with the necessary modifications, to the case of a receiver.[4]

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[1] See *ante* p. 356.
[2] See *ante* p. 356.
[3] See *ante* pp. 360, 361.
[4] See *ante* pp. 360-362.

Rule 85.

Evidence.

Evidence may be taken orally or by affidavit.

85. The Masters may direct the evidence in any matter or any particular proceedings to be taken orally or partly orally and partly by affidavit.

Masters may administer oaths and take recognisances.

86. The Masters may administer oaths to any witness, whether his deposition or affidavit is to be used before themselves or not, and recognisances may be taken and acknowledged before them.

Masters may issue advertisements.

87. The Masters may cause to be issued such advertisements as seem to them expedient, with reference to any application before them.

Persons making affidavits may be cross-examined.

88. Every person who has made an affidavit to be used on any proceeding shall be liable to cross-examination by or before the Masters, and after cross-examination may be re-examined.

Form of affidavits.

89. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed bookwise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this Rule.

Affidavits by two or more deponents.

90. In every affidavit made by two or more deponents, the names of the several persons making the affidavit shall be inserted in the jurat, except that, if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

Description and abode of deponent to be stated.

91. Every affidavit shall state the description and true place of abode of the deponent.

Consent of new trustee to act. Form 12.

92. The consent of a new trustee to act shall be sufficiently evidenced by a written consent signed by him and verified by a solicitor.[1]

Summonses.

Summonses, how prepared and issued. Form 13.

93. Summonses shall be prepared by the parties and sealed by one of the clerks in the Masters' office with the seal of the office,[2] and a copy of the summons shall be left at the Masters' Chambers by the party obtaining the same.

Service and return of summons.

94. Subject to the provisions of these Rules,[3] a summons before the Masters shall be served at least two clear days before the return thereof, unless the Masters direct the summons to be returnable within a shorter time after service. The summons shall be addressed to all the persons on whom it is to be served.

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[1] Ord. xxxviii. r. 19 (*a*) of the R.S.C. 1883 did not apply to lunacy (*re Wilson*, 1886, 31 Ch.D. 522), unless the proceedings were in Chancery as well as in lunacy (*re Hume*, 1886, 35 Ch.D. 457; and see notes to r. 7, *sup.*).

[2] As to forgery of, see sec. 147 of Act of 1890, *ante*.

[3] See rr. 95 and 99, *inf.*

Rule 95.

Further time for service may be allowed.

95. When from any cause a summons before the Masters has not been served upon any party at least two clear days[1] before the return thereof, or within such shorter time as the Masters direct, an endorsement may be made upon the summons, and upon the copy thereof, stamped for service, appointing a new time for the parties not before served to attend, and such endorsements shall be sealed at the Masters' Chambers; and the service of the copy so endorsed and sealed shall have the same effect as the service of an original summons; and when any party has been served before such endorsement, the hearing thereof may, upon the return of the summons, be adjourned to the new time so appointed.

Failure to attend on return of summons.

96. Where any of the parties summoned to attend the Masters in Chambers fail so to attend, whether upon the return of the summons or at any time appointed for the consideration or further consideration of the matter, the Masters may proceed ex parte if, considering the nature of the case, they think it expedient so to do.

Proceeding ex parte not to be re-opened except upon a special application.

97. Where the Masters have proceeded ex parte, such proceeding shall not in any manner be reconsidered in the Masters' Chambers, unless the Masters, upon a special application made to them for that purpose by a party who was absent, are satisfied that a reconsideration is necessary or expedient.

Matters may be further considered from time to time.

98. Where matters in respect of which a summons has been issued are not disposed of upon the return of the summons, the parties shall attend from time to time, without further summons, at such times or time as may be appointed for the consideration of the matter.

Masters may dispense with summons or require summons to be taken out.

99. The Masters may, if they think fit, dispense with any summons ordinarily taken out in the course of the proceedings before them, and require any party attending before them to take out a summons for a particular purpose or within a particular time, and fix the time at which any particular summons shall be returnable before them, or at or within which any proceeding necessary or proper to be taken before them shall be taken, and may proceed de die in diem, or adjourn the proceedings before them, as they think fit.

The Chancery Visitors.[2]

Masters to supply Chancery Visitors with information.

100. The Masters shall furnish the Chancery Visitors with information as to the custody of the person, the property, and the scheme for the maintenance of each lunatic to be visited by the Chancery Visitors, and as to any change which has taken place in the property or in the custody of the person or the scheme for maintenance.

Chancery Visitors to inquire into maintenance of lunatic.

101. The Chancery Visitors shall on each occasion of visiting any lunatic inquire and examine whether he is maintained in a suitable and proper manner, having regard to the existing scheme for his maintenance, and also whether, having regard to his property, it appears expedient that any and what addition should be made to his comforts, or any and what alterations made in the scheme for or manner of his maintenance.

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[1] See *ante* p. 164.

[2] See secs. 163-168 and 183-186 of Act of 1890, *ante;* and Chancery Visitors' Forms, *post.*

Rule 102. Chancery Visitors to make special report in certain cases.

102. If the Chancery Visitors on such inquiry and examination consider that the lunatic is not maintained in a suitable manner, or that the allowance provided for his maintenance is not duly applied, or that any provision in the scheme for his maintenance, either for his personal comfort or enjoyment, or otherwise, is not duly observed, or that any addition to the comforts or any alteration in the manner of the maintenance of the lunatic should be made which his property is capable of providing, they shall forthwith make a special report, stating their opinion and the grounds thereof to the Board of Visitors.[1]

Board to consider report.

103. The Board shall thereupon consider the report, and shall, if they think fit, refer the same to the Masters.

Masters to investigate matters in report.

104. The Masters shall, on any such report as aforesaid being referred to them by the Board, investigate the matters thereby reported upon, and may, if they deem it expedient, summon the committee of the person or estate to attend before them, to give explanations thereon, and such orders may be made as the circumstances require, and every such order shall be communicated by memorandum to the visitors.

Chancery Visitors to report once a year to the Lord Chancellor.

105. The Chancery Visitors shall once at least in every year report to the Lord Chancellor in the case of each lunatic, stating the result of their examination and inquiry as to the maintenance of each lunatic, and shall also in any case in which any special report to the Board has been made, state, so far as possible, what steps have been taken in consequence of such special report.

Masters to inform committees of person of allowance for maintenance.

106. The Masters shall inform the committees of the person upon their appointment of the annual amount allowed for the maintenance of the lunatic, or shall supply them with a copy of the scheme for maintenance, where a scheme has been provided.

Committee of person to report to visitors as to expenditure.

107. Each committee of the person of a lunatic shall annually or from time to time and as often as may be required of him render to the Board of Visitors an accurate statement in writing of the various sums expended by him, the better to enable the visitors to ascertain and report whether the lunatic is being suitably maintained and whether any additional comforts can be provided for him. The visitors may dispense wholly or partially with the requirements of this Rule if in any case they think it desirable so to do.

Committee of person to report to visitors as to health of lunatic.

108. Each committee of the person of a lunatic shall half-yearly make a report to the Board of Visitors as to the mental and bodily health of the lunatic. If there is a medical attendant of the lunatic, such medical attendant shall either countersign the report of the committee, or shall make a separate report which shall accompany that of the committee or be forwarded direct to the Board of Visitors.

Power to visitors to summon committee of person.

109. The Board may summon the committee of the person of the lunatic to attend before them and to give such information in his possession relating to the lunatic as they may require.

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[1] See sec. 167 of Act of 1890, *ante*.

Costs and Taxation of Costs.[1]

Rules of Supreme Court as to costs to apply.

110. The Rules of the Supreme Court as to costs for the time being in force shall, subject to these Rules, apply to the costs of proceedings under the Lunacy Acts 1890 and 1891, taken after the commencement of these Rules in any matter.

Pending proceedings.

111. In proceedings pending at the commencement of these Rules, the Rules as to costs in Lunacy applicable before the commencement of these Rules shall continue to apply.

Solicitors to be allowed same costs as in Chancery Division.

112. In all cases not otherwise herein specially provided for, solicitors shall be entitled to charge and be allowed the fees they would be entitled to charge and be allowed for work and labour of a similar character transacted in the Chancery Division of the High Court.

Refreshments not allowed.

113. No allowance shall be made for refreshments upon inquisitions.

Costs to be taxed by Masters.

114. Costs of proceedings under the Lunacy Acts 1890 and 1891 shall be taxed by and under the direction of the Masters. Charges and expenses shall not be allowed, except to committees of the estate or person, unless under special circumstances the Judge or Masters in any case direct them to be allowed.

Procedure on taxation.

115. Where it is ordered that any costs, or costs, charges, and expenses be taxed, the Masters shall tax and certify such costs, or costs, charges, and expenses, and shall certify the names of the respective solicitors to whom the same should be paid; and due notice of attending the Masters on the taxation shall be given to such parties as have liberty to attend on the proceedings in the matter; and where it is ordered that the costs, charges, and expenses of any committee or party in the matter of any application under the Lunacy Acts 1890 and 1891 be taxed, the Masters, in taxing such costs, charges, and expenses, shall not allow the costs, charges, or expenses of any application upon which no order has been drawn up, or of any evidence in relation thereto, unless they direct the same to be allowed as costs in the matter, and shall not allow the costs, charges, or expenses of or incidental to any application before the Masters which they have refused, unless the Masters are of opinion that such application was proper.

Construction of and Proceedings under Orders.

Certain orders to take effect till further order.

116. All orders for the appointment of Committees[2] and for the allowance of maintenance[3] shall be deemed[4] to take effect only until further order.

Order appointing committee to take effect on security being given.

117. Where it is ordered that a person named be appointed committee of the estate, the order shall be deemed to take effect only on the Masters certifying that he has given such security as they have approved for answering

[1] As to costs, see sec. 109 of Act of 1890, *ante*.

[2] See sec. 108, subs. (2) of Act of 1890, *ante*.

[3] See secs. 117, 127, 130 of Act of 1890, *ante*.

[4] *I.e.* shall be conclusively taken (see *ante* p. 138).

Rule 118.

the estate and accounting for the rents, profits, and produce thereof once in every year, or oftener, if required, before the Masters; and such security shall be perfected [1] at or within such time as the Masters appoint, and until such security has been perfected, the approved committee shall not, unless otherwise ordered, interfere in any manner in the affairs of the lunatic as the committee of his estate or otherwise. The Masters shall inform the Paymaster-General when such security has been perfected.

Committee to account for money received.

118. Where it is ordered that the committee of the estate do receive, or be at liberty to receive, any money on account of the lunatic or his estate, he shall give credit for the same on passing his accounts before the Masters, and where any sum is ordered to be allowed for the maintenance of the lunatic, or to be expended for any other purpose out of his estate, the committee of the estate shall be allowed the amount of the allowance for maintenance or the amount to be expended (as the case may be) on passing his accounts before the Masters.[2]

Payments by committee.

119. Where it is ordered that the committee of the estate do pay any sums of money for maintenance, he shall pay the same out of income, and where it is ordered that he do pay any costs, he shall, unless otherwise ordered, pay the same, when taxed, out of any moneys coming to his hands, after providing for the maintenance.

Inventory to be signed.

120. Where it is ordered that any person be at liberty to retain any furniture or effects of the lunatic, he is to sign an inventory thereof and an undertaking to deliver up the same when required so to do, and such inventory and undertaking shall be deposited in the office of the Masters.

Proper officers to transfer stock.

121. Where it is ordered that a sum of stock standing in the books of the Bank or other public company be transferred into Court either generally or on a particular account, and no person is named [3] in the order for making the transfer, the Secretary or Deputy Secretary, Accountant-General, or Deputy Accountant-General for the time being of the Bank, or other proper officer of such other company, shall make the transfer, and he, or one of the cashiers for the time being of the Bank, or other such proper officer as aforesaid, shall, if so directed, receive any sum of money standing in the books of the Bank or such other company as aforesaid accrued due at the date of the order by way of dividend, bonus, or periodical payment in respect of the stock to be transferred, and also any future sum so to accrue due previously to the transfer, and shall pay the same into Court either generally or on such particular account as aforesaid, as the case may require.

How lease to be settled. Repealed by R. L. 1893, r. 10.

122. *Where an order is made authorising a lease of a lunatic's property, the Masters shall settle a proper lease in pursuance of the order, and shall sign their allowance of the lease when settled, and the committee of the estate shall in the name and on behalf of the lunatic execute the lease when allowed, upon the intending lessee executing a counterpart thereof.*

R. L. 1893, r. 10. Allowance of lease to be authenticated by seal.

10. Where an order is made authorising a lease of a lunatic's property, the Masters shall settle a proper lease in pursuance of the order, and their allowance of the lease when settled shall be sufficiently authenticated by the seal of the

[1] See *ante* p. 352.
[2] See *ante* p. 357.
[3] As to where a person is named, see sec. 137 of Act of 1890, *ante*.

Masters' office; and the committee of the estate shall in the name and on behalf of the lunatic execute the lease when allowed, upon the intending lessee executing a counterpart thereof. **Rule 123.**

Order to raise money by mortgage.

123. Where it is ordered that the committee be at liberty to raise by mortgage of any part of the lunatic's estate a sum of money for any purpose, the Masters shall settle and approve a proper mortgage, and the committee upon payment to him, or as may be directed, of the amount to be raised, shall in the name and on the behalf of the lunatic execute the mortgage when so settled and approved, and do all such other acts as are necessary to effectuate the same, and the committee shall out of the income of the lunatic's estate pay and keep down the interest on the mortgage.[1]

Orders for sale.

124. Where an order for the sale of a lunatic's real or leasehold estate is made, the purchaser shall, within such time as the Masters appoint, pay his purchase money into Court, or otherwise as the Masters direct, and in case of payment into Court to such account, as the Masters appoint, and upon such payment, the purchaser shall be let into possession or receipt of the rents and profits as from such day as the Masters appoint, and the committee of the estate shall forthwith in the name and on behalf of the lunatic execute all proper assurances of the property sold to the purchaser or as he directs to be settled by the Masters, and due notice of attending the Masters shall be given to all parties interested.[2]

Writs of Execution, etc.

Writ of execution to issue out of Central Office.

125. All process or writs of execution, attachment, or otherwise, requisite for the enforcement of any order made under the Lunacy Acts 1890 and 1891, may be issued out of the Central Office of the Supreme Court.

Percentage and Fees.[3]

Percentage in case of lunatics so found by inquisition.

126. There shall be paid a percentage at the rate of 4 per cent per annum on the clear annual income, amounting to £100 and upwards, of every lunatic so found by inquisition, but so that no larger sum shall be payable in any case in any one year than £400.

Percentage in other cases.

127. In the case of lunatics not so found by inquisition and of persons mentioned in sec. 116 (1) (*d*) of the Lunacy Act 1890, with respect to whose property orders have been made under which income is from time to time dealt with or made available, there shall be paid a percentage at the rate of 2 per cent per annum on the clear annual income amounting to £100 and upwards so dealt with or made available, but so that no larger sum shall be payable in any case in any one year than £200. This Rule shall apply to all orders made after the commencement of these Rules.

Sums under 10s. to be disregarded.

128. In calculating percentage payable under these Rules sums less than ten shillings shall be disregarded, and shall not be levied.

Fees.

129. The following fees shall be payable in respect of proceedings under the Lunacy Acts 1890 and 1891 :—

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[1] See sec. 117 of Act of 1890, *ante*.

[2] See sec. 120 of Act of 1890, *ante*.

[3] See sec. 148 of Act of 1890, *ante*, and sec. 27, subs. (3) of Act of 1891, *ante* p. 465. As to taking percentage by stamps, see Treasury Order of 11th August 1892, *post*.

Rule 129.

CERTIFICATES.

	£	s.	d.
On every certificate of a Master other than a certificate of a Master respecting percentage	1	0	0

ATTENDANCES.

	£	s.	d.
On an application, with or without subpœna, for any officer to attend as a witness or to produce documents (in addition to the reasonable expenses of the officer), for each day or part of a day he shall necessarily be absent from his office .	1	0	0

The officer may require a deposit of stamps on account of any further fees, and a deposit of money on account of any further expenses which may probably become payable beyond the amount paid for fees and expenses on the application, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof on the application.

The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amounts so paid and deposited.

ORDERS.

	£	s.	d.
On every order	2	0	0

And in addition thereto the following fees, where the clear annual income of the person to whose property the Order relates amounts to £100 and upwards :—

	£	s.	d.
(*a*) On an order authorising a particular lease an amount equal to one-fourth the stamp duty payable on the lease ;			
(*b*) On an order authorising a sum of money to be raised by mortgage or charge for every £100 or fraction of £100 of the amount to be raised . . .	0	2	0
(*c*) On an order approving or authorising a contract for sale of any property for every £100 or fraction of £100 of the amount of the purchase money [1] .	0	2	0
(*d*) On an order authorising a sale by auction where the reserve price is fixed or approved by the Masters for every £100 or fraction of £100 of the amount of the reserve price	0	2	0
(*e*) On an order conferring a general authority to sell or grant leases	10	0	0

Provided that the fees payable under the heads (*a*), (*b*), (*c*), and (*d*) shall not exceed £10.

Provided also that the fees payable under the heads (*a*), (*b*), (*c*), (*d*), and (*e*) shall not be payable upon any order made while percentage is payable upon the income of the person to whose property the order relates.

COPIES.

On all copies of documents, the actual cost.

[1] As to order for payment into Court on sale, see *ex parte Clayton*, 1826, 1 Russ. 476 ; *re Chorley*, 1852, 16 Jur. 233.

Rule 130.

Impressed stamps to be used.

130. The fees payable under these Rules shall be paid by means of stamps. Impressed stamps shall be used, unless for some sufficient reason to be approved by the Masters their use be inconvenient. The stamps shall be impressed or affixed on the vellum, parchment, or paper on which the proceeding in respect whereof such stamps are required is written or engrossed, or which may otherwise be used in reference to such proceeding.

Stamp to be cancelled.

131. Every officer who receives any document to which a stamp is affixed, shall immediately upon the receipt of such document cancel or deface the stamp thereon, by writing upon such stamp his name or the initial letters of his name in such a manner as to show clearly and distinctly that such stamp has been made use of, and so that the same may not be again used, and no document bearing an adhesive stamp shall be filed or delivered out until the stamp thereon has been cancelled or defaced in manner aforesaid.

Limited number of adhesive stamps to be used.

132. In all cases where adhesive stamps are used, the stamps affixed to the document shall be of an amount corresponding as nearly as is practicable with the amount of the stamp which such document requires, in order that no greater number of adhesive stamps may be affixed to any document than is actually necessary.

Masters to certify amount of percentage.

133. The Masters shall certify the amount of percentage payable in each case and the person who is to pay the same, and the time within which the same is to be paid, and such person shall pay the same out of the first money coming to his hands on account of income.

Masters may certify percentage to be paid out of dividends.

134. The Masters may, in such cases as they think fit, certify that the whole or any part of the percentage payable on the incomes of lunatics shall be paid out of cash arising from dividends of the lunatic standing to the credit of the matter of any lunacy either generally or to any particular account, and when any such certificate is made, the amount certified thereby shall not be paid by means of stamps, but shall be carried over and transferred in manner hereinafter directed.

Lunacy Percentage Account.

135. There shall be kept in the Paymaster-General's Office an account intituled "The Paymaster-General's Lunacy Percentage Account."

Upon certificate of Masters dividends to be carried to Percentage Account.

136. When any such certificate as last hereinbefore mentioned is made, an office copy of such certificate shall be left at the office of the Paymaster-General, who shall by virtue of such certificate, out of any cash arising from dividends or interest on money on deposit belonging to the lunatic standing to the credit of the matter of any lunacy, carry over the amount mentioned in such certificate from the credit of the account in such certificate mentioned to the credit of the Lunacy Percentage Account, and any orders made and to be made in any such matters respectively are to be subject to this Rule and to be acted upon accordingly.

Transfer from Percentage Account to Cash Account.

137. As soon as conveniently may be after the 31st of January in each year, the Paymaster-General shall, by certificate under his hand, direct the Bank to transfer to his "Cash Account" at the Bank the amount of cash standing on that day to the credit of the Lunacy Percentage Account, and such certificate shall be a good and sufficient authority to the Bank to write off the amount therein mentioned from the Lunacy Percentage Account, and

Rule 138.

to carry it to the "Cash Account," without any further order of the Court, and upon receiving from the Bank a certificate that such transfer has been effected, the amount so transferred shall be placed to the debit of the proper accounts in the books of the Paymaster-General.

Percentage to be paid by stamps.

138. Subject to the provisions hereinbefore contained, the percentage shall be paid by means of stamps, and the Masters shall give notice in writing to the committee of the estate or other proper person of the amount of percentage to be paid by him according to the certificate of the Masters, and of the time within which such amount is to be paid, and the committee or other person shall within such time pay the amount stated in the notice out of income by purchasing stamps to such amount and shall file such notice duly stamped at the office of the Masters.

Percentage may be paid for less than a year.

139. Where it appears to the Masters with a view to the establishment of a uniform period for the payment of percentage or for other purposes to be expedient, they may make in any case a certificate comprising the income of a period greater or less than one year, and stating the amount of percentage payable for such period.

Masters to certify persons in default in paying percentage.

140. The Masters shall once at least in every six months, and oftener if they think fit, certify to the Treasury the names of all persons, if any, who are then in default in paying the amount certified to be payable by them in respect of the said percentage and filing the notices duly stamped as hereinbefore provided, with the amounts payable by such parties respectively.

Copies of Documents.

Copies to be made in the Masters' office.

141. The following copies of proceedings and documents shall be made in the Masters' office (that is to say): office copies of affidavits to be made for and taken by the party filing the same; copies of documents prepared in the Masters' office to be made for and taken by the party having the conduct of the proceedings; office copies of all orders, certificates, and other documents, and of all proceedings filed in the Masters' office; and copies of all documents filed in the Masters' office. Copies of all proceedings and documents, except those above mentioned, shall be made, delivered, charged, and paid for according to these Rules.

Request for copies.

142. The party, or his solicitor, requiring any copy, save as hereinbefore excepted, shall make a written request, to be delivered to the party by whom the copy is to be furnished or his solicitor with an undertaking to pay the proper charges. Upon the request being made, with such undertaking as aforesaid, copies of such proceedings or documents shall be made by the party or his solicitor filing or leaving the same, or who, under the last preceding Rule, may have taken office copies thereof.

Time for delivery of copies.

143. The copies shall be ready to be delivered at the expiration of forty-eight hours after the delivery of such request and undertaking, or within such other time as the Judge in any case directs, and shall be delivered accordingly upon demand and payment of the proper charges.

Charge for copies.

144. The charges for all such copies shall be at the rate of fourpence per folio of seventy-two words, every figure comprised in a column being counted as one word.

145. The folios of all copies shall be numbered consecutively in the margin thereof, and the name and address of the party or solicitor by whom the same are made shall be endorsed thereon, and such party or solicitor shall be answerable for the same being true copies of the originals or of the office copies of the originals of which they respectively purport to be copies, as the case may be. **Rule 145.** Folios to be numbered.

146. Any party or solicitor who has taken any office copy under these Rules, shall produce the same in Court or at the office of the Masters, when required for the purpose of the proceedings to which the same relates. Solicitor taking office copy to produce it.

147. All office copies and copies to be furnished by parties or their solicitors shall be written on paper of a convenient size, with a sufficient margin, and in a neat and legible manner, similar to that which is usually adopted by law stationers, and in the case of copies to be furnished by parties or their solicitors, unless so written, the parties or solicitors furnishing them shall not be entitled to be paid for the same. Copies to be on convenient paper and legible.

148. In case any solicitor, who is required to furnish any such copy as aforesaid, either refuses or for two clear days from the time when the application for such copy has been made neglects to furnish the same, the person by whom such application has been made shall be at liberty to procure a copy from the office in which the original document is or has been filed or left in the same way as if no such application had been made to the solicitor, and in such case no costs shall be due or payable to the solicitor so making default in respect of the copy or copies so applied for. Default of solicitor to furnish copy.

149. The Masters shall not allow any costs in respect of any copy, unless the same appears to them to have been required and to have been made with due care. Costs of unnecessary copies to be disallowed.

The sixth day of February 1892.

(Signed) HALSBURY, *C.*

The SCHEDULE referred to in the foregoing Rules.

Form I.

Title of Proceedings.

(*a*) *Application as to alleged Lunatic.*

In Lunacy.

In the matter of *A.B.*, a person alleged to be of unsound mind.

(*b*) *Application as to Lunatic so found by Inquisition.*

In Lunacy.

In the matter of *A.B.*, a person of unsound mind.

(*c*) *Application as to Lunatic not so found by Inquisition.*

In Lunacy.

In the matter of *A.B.*, a person of unsound mind, not so found by inquisition.

(*d*) *Application in Lunacy and in the Chancery Division.*

In Lunacy
and
In the High Court of Justice,
Chancery Division.
In the matter of *A.B.*, a person of unsound mind [*or as the case may be*].

(*e*) *Application as to Person through mental infirmity arising through Disease or Age incapable of managing his affairs.*

In the matter of *A.B.*,
and
In the matter of the Acts 53 Vict. c. 5, and 54 & 55 Vict. c. 65.

(*f*) *Application for Vesting Order.*

In Lunacy.
In the matter of the trusts of an indenture dated the
and made between
and
In the matter of *A.B.*, a person of unsound mind (*or as the case may be*),
and
In the matter of the Lunacy Acts 1890 and 1891.

Form 2.

Notice of Appeal from an Order of a Master.

[*Insert the Title of the Proceedings.*]

TAKE NOTICE that of desires to appeal to the Judge from the order of the Master made in this matter dated the [*if part only is appealed from, add:* so far as it directs that].

AND THAT he intends to ask that the said order may be discharged [*or* varied] and that it may be ordered that

Dated the day of

(Signed)
Solicitors for

To

and to Messrs.
his Solicitors.

Form 3.

Notice of Appeal from a Certificate of a Master.

[*Insert the Title of the Proceedings.*]

TAKE NOTICE that of intends to appeal from the certificate of the Master made in this matter dated the

AND THAT he intends to ask that the said certificate may be varied as follows: [*state the variation*].

And that such consequential directions may be given or corrections and alterations made in the said certificate as may be necessary.

Dated the day of

(Signed)
Solicitors for

To

and to Messrs.
his Solicitors.

Form 4.

Petition for an Order for Inquisition.

[*For title see Form* 1 (*a*).]

To the Right Honourable the Lord High Chancellor of Great Britain,

The humble petition of *C.D.*, of in the county of showeth as follows:

1. *A.B.*, now residing at is now and for years last past has been of unsound mind and incapable of managing himself and his affairs.

2. Your petitioner is the father of the said *A.B.*

Your petitioner therefore humbly prays that the Masters in Lunacy, or one of them, may be directed to inquire concerning the alleged lunacy of the said *A.B.*

And your petitioner will ever pray, &c.

(Signed) *C.D.*

Witness to the signature of the said *C.D.*,
E.F.
Solicitor.

Form 5.

Notice to alleged Lunatic of Petition for Inquisition.

"Mr. *A.B.*

"Take notice that a petition, of which a copy is within written, has been presented to the Lord Chancellor by me (*or* by *C.D.*, of),[1] and that by virtue of and under the same an inquiry may be ordered to take place before one of the Masters in Lunacy as to whether you are or are not of unsound mind and incapable of managing yourself and your affairs, but that you may, in case you think fit, demand that such inquiry may, if ordered, be had before a jury, in which case a notice of such your desire must be signed by you and attested by a solicitor, and filed at the office of the Masters in Lunacy, the Royal Courts of Justice, London, within seven clear days after your receipt of this notice.

"Dated the day of

(Signed) *C.D.*
(or *X.Y.* of
Solicitor.)"

Form 6.

Notice to alleged Lunatic of Report of Commissioners under the Lunacy Act 1890.

"Mr. *A.B.*

"Take notice that the Commissioners in Lunacy, on the day of made a Report to the Lord Chancellor, stating that you are detained or taken charge of as a lunatic, and that they are of opinion that your property is not duly protected (*or* that the income of your property is not duly applied for your benefit *or to that effect*): And take notice that such Report having been duly filed, an inquiry may thereon be ordered by the Judge in Lunacy to take place before one of the Masters in Lunacy as to whether or not you are of unsound mind and incapable of managing yourself and your affairs, but that in case you think fit to demand that such inquiry if ordered to be held may take place before a jury, a notice thereof must be signed by you and attested by a solicitor, and filed at the office of the Masters in Lunacy, the Royal Courts of Justice, London, within seven days after your receipt of this notice.

"Dated the day of

(Signed) *X.Y.*"

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[1] When a demand for a jury has already been filed, from this to the end is to be omitted.

Form 7.

Notice by alleged Lunatic demanding a Jury.

"In the matter of *A.B.*, an alleged lunatic.

"I, the above-named *A.B.*, having been on the day of served with a notice of a petition for an order for an inquiry (*or* of the filing of a Report whereon an inquiry may be ordered), whether or not I am of unsound mind and incapable of managing myself and my affairs, do hereby demand that, in the event of such an inquiry as aforesaid being ordered, the same be had before a jury.

"Dated the day of

(Signed) *A.B.*"

"Witness,
"*M.N.*, of
"Solicitor."

Form 8.

Notice to Person of Unsound Mind not so found by Inquisition of Application under the Lunacy Acts 1890 and 1891.

"Mr. *A.B.*

"Take notice that a summons, of which a copy is within written, was on the day of issued by me (*or* by *C.D.*, of), and that in pursuance thereof orders may be made on the ground (*state the ground on which the case is brought within section* 116 *of the Lunacy Act* 1890, *e.g.*, that you are lawfully detained as a lunatic) for the purpose (*state the purpose, e.g.*, of rendering your property or the income thereof available for the maintenance or benefit of yourself *or* of yourself and your family *or* for carrying on your trade or business), and that if you intend to object to such orders being made, notice of such objection must be signed by you and attested by a solicitor, and filed at the office of the Masters in Lunacy, the Royal Courts of Justice, London, within seven clear days after your receipt of this notice.

"Dated the day of

(Signed) *C.D.*
(or) *X.Y.*
Solicitor."

Form 9.

Notice of Objection by Person of Unsound Mind not so found by Inquisition to Order under Lunacy Acts 1890 and 1891.

I, *A.B.*, of having been served with a notice of a summons for an order respecting my property, under the Lunacy Act 1890, hereby give notice of my intention to object to such order being made.

Dated the day of

A.B.

Witness,
E.F.,
Solicitor.

Form 10.

Notice to Person through Mental Infirmity arising from Disease or Age incapable of managing his Affairs.

"Mr. *A.B.*

"Take notice that a summons, of which a copy is within written, was on the day of issued by me (*or* by *C.D.* of), and that in pursuance thereof, orders may be made on the ground that you are, through mental infirmity arising from disease [*or* age], incapable of managing your affairs, for the purpose (*state the purpose, e.g.*, of rendering your property or the income thereof available for the

maintenance or benefit of yourself *or* of yourself and your family *or* for carrying on your trade or business), and that if you intend to object to such orders being made, notice of such objection must be signed by you and attested by a solicitor, and filed at Room No. at the Royal Courts of Justice, London, within seven clear days after your receipt of this notice.

"Dated the day of

(Signed) *C.D.*,
(or *X.Y.*
Solicitor."

FORM 11.

NOTICE OF OBJECTION BY PERSON THROUGH MENTAL INFIRMITY ARISING FROM DISEASE OR AGE INCAPABLE OF MANAGING HIS AFFAIRS.

I, *A.B.*, of , having been served with a notice of a summons for an order respecting my property under the Acts 53 Vict. c. 5, and 54 & 55 Vict. c. 65, hereby give notice of my intention to object to such order being made.

Dated the day of

A.B.

Witness,
M.N.,
Solicitor.

FORM 12.

CONSENT TO ACT.

I, *A.B.*, of hereby consent to act as a trustee of the [*describe the instrument*].

Dated the day of

(Signed) *A.B.*

I, *C.D.*, of Solicitor, hereby certify that the above-written signature is the signature of *A.B.*, the person mentioned in the above-written consent.

Dated the day of

(Signed) *C.D.*

FORM 13.

SUMMONS BEFORE THE MASTERS.[1]

[*For title see Form* 1.]

Let all parties concerned attend the Master in Lunacy in Chambers [*or in the case of a person through mental infirmity arising from disease or age incapable of managing his affairs:* the Master in Chambers at Room No.], at the Royal Courts of Justice, London, on day the day of at o'clock in the noon on the hearing of an application on the part of [*here state on whose behalf the application is made and its object*].

Dated the day of 18 .

This summons was taken out by
of , Solicitor for
To

RULES MADE BY THE SECRETARY OF STATE UNDER SEC. 338, SUBS. (4) OF THE LUNACY ACT 1890.

s. 9, subs. (3) of Act of 1890, *ante* p. 108.

1. If on the presentation to a magistrate of a petition for a reception order, or the transmission to a magistrate of a notice that a lunatic desires to exercise the right of being taken before or being visited by him, such magistrate is unable to proceed upon such petition or notice without interfering with or delaying the exercise of his ordinary jurisdiction, it shall be lawful for him by writing under his hand, to certify such inability, together with the grounds upon which the certificate is founded, and thereupon to deliver or send the petition or notice, and the documents accompanying

[1] See pp. 284, 362.

the same, together with such certificate, to the justices' clerk of the petty sessional division or borough where the lunatic is, to be by him transmitted to some other of the judicial authorities mentioned in sec. 9, subs. (1) of the Lunacy Act 1890; and such other judicial authority shall thereupon proceed in the matter as if such petition had been presented or such notice had been transmitted to him in the first instance.

2. A magistrate signing any such certificate shall also send a copy thereof to the Home Office.

3. Certificates under these rules shall be in the form in the Schedule.

HENRY MATTHEWS,
Secretary of State.

Home Office, Whitehall,
31st March 1890.

THE SCHEDULE.

Form of Certificate.

Whereas a petition for a reception order in the matter of *A.B.*, a person alleged to be of unsound mind, has been presented to me: [*or*, Whereas a notice of the desire of *A.B.*, a person under care and treatment as a lunatic, to be taken before or visited by a judge of county courts, magistrate, or justice of the peace has been transmitted to me:]

Now I, the undersigned, certify that I am unable to proceed upon the said petition [*or* the said notice] without interfering with or delaying the exercise of my ordinary jurisdictions. The grounds upon which this certificate is founded are as follows: [*State them.*]

(Signed)

Dated

s. 9, subs. (3) of Act of 1890, *ante* p. 108.

RULES MADE BY THE LORD CHANCELLOR UNDER SEC. 338, SUBS. (4) OF THE LUNACY ACT 1890.

1. If on the presentation to a judge of county courts of a petition for a reception order, or the transmission to a judge of a notice that a lunatic desires to exercise the right of being taken before or being visited by him, such judge is unable to proceed upon such petition or notice without interfering with or delaying the exercise of his ordinary jurisdiction, it shall be lawful for him by writing under his hand, to certify such inability, together with the grounds upon which the certificate is founded, and thereupon to send the petition or notice, and the documents accompanying the same, together with the certificate, by registered post, to the justices' clerk of the petty sessional division or borough where the lunatic is, to be transmitted by the clerk to some other of the judicial authorities mentioned in sec. 9, subs. (1) of the Lunacy Act 1890; and such other judicial authority shall thereupon proceed in the matter as if the petition had been presented or the notice had been transmitted to him in the first instance.

2. A judge of county courts signing a certificate under these rules shall also send a copy thereof to the Lord Chancellor.

3. Certificates under these rules shall be according to the form in the Schedule.

THE SCHEDULE.

Form of Certificate.

Whereas a petition for a reception order under the Lunacy Act 1890, in the matter of *A.B.*, a person alleged to be of unsound mind, has been presented to me: [*or*, Whereas a notice of the desire of *A.B.*, a person under care and treatment as a lunatic, to be taken, under the Lunacy Act 1890, before or visited by a judge of county courts, magistrate, or justice of the peace has been transmitted to me:]

Now I, the undersigned, certify that I am unable to proceed upon the said petition [*or* the said notice] without interfering with or delaying the exercise of my ordinary jurisdiction as a judge of county courts. The grounds upon which this certificate is founded are as follows: (*here state them*).

(Signed)

Judge of the county court of

Dated

(Signed) HALSBURY, *C.*

29th March 1890.

RULES OF SUPREME COURT AS TO LUNACY.[1]

Order IX. r. 5.

When a lunatic or person of unsound mind not so found by inquisition is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides, or under whose care he is, shall, unless the Court or a judge otherwise orders, be deemed good service on such defendant.

Service on lunatics.

Lunatic, i.e. so found by inquisition.

As to various meanings of the term, see *ante* p. 3, and sec. 341 of the Lunacy Act 1890, *ante*.

Person of unsound mind.—See *ante* p. 4.

Not so found by inquisition.—As to inquisitions see notes to secs. 90 *et seq.* of the Lunacy Act 1890, *ante*.

A defendant.—As to actions by and against lunatics, see Order xvi. r. 17, *inf.*, and notes thereon.

The committee, i.e. of his estate. As to committees of the estate, see *ante* pp. 347 *et seq.* In an action for specific performance of a contract where one party was a lunatic so found, but no committee had been appointed of her person or estate, the Court directed service of the writ on the keeper of the asylum, or on the person with whom the lunatic was residing.[2]

Practice where no committee appointed.

The person with whom . . . is.—This provision obviates objections which were very common under the old practice as to whether service had been properly effected on lunatic defendants. At common law, to justify an appearance being entered for a defendant, either there must have been personal service of the writ of summons,[3] except in ejectment cases,[4] or the plaintiff had to apply for a *distringas*;[4] and in equity it was held[5] that substituted service could not be made upon the medical officer of an asylum where a lunatic defendant was confined, but that service must be effected on the lunatic himself, although the medical officer might be introduced at the time to prevent the lunatic from being terrified.

Difficulties as to service under old practice.

The Court or a judge.—As to meaning of, see Annual Practice, p. 207.

"Court or judge."

Otherwise orders.—See form of summons for special service on defendant under this rule, Dan. Ch. F. No. 115.

Be deemed, i.e. taken conclusively to be (see *ante* p. 138).

"Be deemed."

Good service.—Service under this rule and Order lxvii. r. 5, is sufficient to justify the issue of a writ of sequestration against the estate and effects of a person of unsound mind under Order xliii. r. 6.[6] Service on the lunatic sole partner of a firm should be effected under this rule.[7]

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[1] See generally on this subject the notes in the Annual Practice to the rules cited in the text.

[2] *Than* v. *Smith*, 1879, 27 W.R. 617. An attachment will issue against the keeper of an asylum for obstructing such service (*Denison* v. *Hardings*, 1867, W.N. 17).

[3] Cp. *Blake* v. *Cooper*, 1851, 11 C.B. 680. Personal service was often very difficult to effect (cp. *Branson* v. *Moss*, 1840, 6 M. & W. 420; *Starkie* v. *Skilbeck*, 1837, 6 Dowl. 52; *Williamson* v. *Maggs*, 1858, 28 L.J., N.S., Ex. 5).

[4] Cp. *Doe d. Gibbard* v. *Roe*, 1841, 9 Dowl. 844.

[5] *Morgan* v. *Jones*, 1855, 4 W.R. 381.

[6] *Robinson* v. *Galland*, 1889, W.N. 108.

[7] *Fore Street Warehouse Co.* v. *Durrant*, 1883, 10 Q.B.D. 471.

Order XIII. r. 1.

Default of appearance by . . . person of unsound mind.

Where no appearance has been entered to a writ of summons for a defendant who is . . . a person of unsound mind not so found by inquisition, the plaintiff shall, before further proceeding with the action against the defendant, apply to the Court or a judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons. . . .

Rule applies to originating summons.

A writ of summons.—This rule applies to an originating summons as well as to an ordinary writ of summons.[1]

A person of unsound mind.—As to meaning of the term "unsound mind," see *ante* p. 4.

When lunatic so found, appears by guardian *ad litem.*

Not so found by inquisition.—As to inquisitions, see notes to secs. 90 *et seq.* of the Lunacy Act 1890, *ante*. A lunatic so found appears by his committee (Order xvi. r. 17, *post*), unless his committee has died and a new one has not been appointed,[2] or the committee is plaintiff, or has an adverse interest, in either of which cases a guardian *ad litem* may be assigned to him on the application of the plaintiff.

Appointment at instance of co-defendant.

The plaintiff.—A guardian *ad litem* to a defendant of unsound mind under circumstances rendering it necessary, as *e.g.* where a question of indemnity or contribution arises, may it seems be appointed at the instance of a co-defendant by analogy to this rule.[3]

Semble, the same principle would apply to a person served with a counter-claim under Order xxi. r. 12.

Shall.—The rule is now compulsory. Order xiii. r. 1 of the Rules of 1875 was merely permissive.[4]

Before further proceeding.—An appearance must be entered on behalf of a defendant of unsound mind as a necessary preliminary to an application for the appointment of a guardian *ad litem* to act for him,[5] but no subsequent step can be taken on his behalf till the order appointing the guardian has been obtained.[6]

Mode of application.

Apply.—The application is by motion, as to service of which see Order ix. r. 5, *ante*. For form of motion see Dan. Ch. F. p. 46, Chitty Pr. p. 555.

"Court or a judge."

The Court or a judge.—As to meaning of, see "Annual Practice," p. 207.

An order.—For form of order see Seton, 821.

Some proper person.—The official solicitor is usually appointed,[7] unless

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[1] *Re Pepper*, 1884, 32 W.R. 765.

[2] *Snook* v. *Watts*, 1860, Seton 820.

[3] Cp. *re Dawson*, 1889, 41 Ch.D. 415.

[4] Cp. *Taylor* v. *Pede*, 1881, 29 W.R. 627.

[5] 1 Dan. Ch. Pr. 183; and cp. *Lushington* v. *Sewell* (a case as to infants), 1821, 6 Madd. 28. The practice is the same in regard to suits commenced by summons (*Osbaldiston* v. *Crowther*, 1853, 1 Sm. & G. App. xii.).

[6] 1 Dan. Ch. Pr. 183.

[7] 1 Dan. Ch. Pr. 183; and cp. *M'Keverakin* v. *Cort*, 1844, 7 Beav. 347; *Moore* v. *Platel*, 1845, *ib.* 583; *Biddulph* v. *Lord Camoys*, 1846, 9 Beav. 548;

there is some relative or friend of the defendant who is a fit person, and is willing to undertake the defence.[1] Neither the plaintiff,[2] nor his solicitor,[3] nor a person out of the jurisdiction can be appointed guardian *ad litem*. Who appointed guardian.

Be assigned.—As to costs of official solicitor see R.S.C. Order lxv. r. 13, reproducing Cons. Order xl. r. 4. The Court will usually direct the plaintiff to pay the official solicitor's costs and add them to his own.[4] Where a defendant is unable to defend from bad health, not arising from or producing lunacy, the practice is to allow time for the defence, and not to assign a guardian.[5] Costs of official solicitor. Practice where defendant in ill-health.

Appear and defend.—The defence of a lunatic is expressed to be made by his committee or his guardian, or by the person assigned as his guardian by the Court.[6] See further notes to Order xvi. r. 17, *post*.

The lunatic or person of unsound mind enjoys through his committee or next friend all remedies open to him but for his disability.[7]

No such order.—A form of order appointing a guardian *ad litem* is given in the Appendix, *post*. The order is made under the jurisdiction of the High Court of Chancery, and not under the jurisdiction in lunacy,[8] and if the fact of the infirmity is disputed or the order has been irregularly obtained by the defendant, the plaintiff may move, on notice to the defendant, to discharge the order,[9] and if necessary an inquiry as to the fact of the infirmity[10] will be ordered. The defendant on recovery may apply by motion, on notice to the plaintiff and to the guardian,[11] that the latter may be discharged.[12] Orders appointing guardians *ad litem* should be left at the Central Office for entry.[13] Order made in Chancery. Inquiry as to fact of infirmity.

It appears.—The application must be supported by affidavits establishing the mental incapacity of the defendant,[14] the fitness of the proposed guardian, and the fact that he has no adverse interest.[15] Affidavit in support of application.

Duly served.—As to service, see Order ix. r. 5, *ante*.

Notice.—For form of, see Dan. Ch. F. No. 130.

Biddulph v. *Dayrell*, 1846, 15 L.J., N.S., Ch. 320; *Charlton* v. *West*, 1861, 3 De G. F. & J. 156; the practice did not, however, prevail where the application was by the family of the defendant, *ib.*; and cp. *Brooks* v. *Jobling*, 1843; 2 Hare 155; *Thomas* v. *Thomas*, 1843, 7 Beav. 47; *Piddocke* v. *Smith*, 1851, 15 Jur. 1120; *Needham* v. *Smith*, 1843, 6 Beav. 130; *White* v. *Duvernay*, 1891, Prob. 290.

[1] See authorities cited in preceding note, and cp. *Bonfield* v. *Grant*, 1863, 11 W.R. 275, where a brother, and *Newman* v. *Selfe*, 1863, *ib.* 764, where a son, of a lunatic defendant were appointed co-defendants.

[2] 1 Dan. Ch. Pr. 173.

[3] *Biddulph* v. *Lord Camoys*, 1846, 9 Beav. 548. The plaintiff's solicitor should not on the instructions of his client enter an appearance for a lunatic defendant (*Camps* v. *Marshall*, 1873, L.R. 8 Ch. 462).

[4] Cp. *Harris* v. *Hamlyn*, 1849, 3 De G. & S. 470; *Fraser* v. *Thompson*, 1859, 4 De G. & J., at p. 662; *Robinson* v. *Aston*, 1842, 9 Jur. 224.

[5] *Willyams* v. *Hodge*, 1849, 1 Mac. & G. 516; and cp. *Patrick* v. *Andrews*, 1852, 22 L.J. Ch. 240; *Steel* v. *Cobb*, 1863, 11 W.R. 298; *Newman* v. *Selfe*, 1863, *ib.* 764.

[6] 1 Dan. Ch. Pr. 184.

[7] *Coppendale* v. *Sutherland*, 12 Geo. II. Barnes 42; *Stewart* v. *Graham*, 1815, 19 Ves. 315.

[8] *Pidcock* v. *Boultbee*, 1852, 2 De G. M. & G. 898.

[9] 1 Dan. Ch. Pr. 184.

[10] *Lee* v. *Ryder*, 1822, 6 Madd. 294; *Howell* v. *Lewis*, 1891, 40 W.R. 88.

[11] See form in Dan. Ch. F. No. 119.

[12] *Blyth* v. *Green*, 1876, W.N. 214; and cp. *Frampton* v. *Webb*, 1863, 11 W.R. 1018.

[13] 1 Dan. Ch. Pr. 185.

[14] *Simmons* v. *Bates*, 1853, 20 L.T. 272; cp. *Watson* v. *Knilans*, 1874, 22 W.R. 639. For form of affidavits see Dan. Ch. F. No. 124.

[15] *Piddocke* v. *Smith*, 1851, 9 Ha. 395; *Foster* v. *Cautley*, 1853, 10 Ha. App. xxiv.

The time allowed for appearance.—See R.S.C. Order xii. r. 22.

"Clear days." *Six clear days.*—"Days" means all days, Sundays,[1] etc., included. The terminals are excluded.[2]

Order XVI. r. 17.

Lunatics and persons of unsound mind.

Where lunatics and persons of unsound mind not so found by inquisition might respectively before the passing of the principal Act have sued as plaintiffs, or would have been liable to be sued as defendants, in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend, according to the practice of the Chancery Division, and may in like manner defend any action by their committees or guardians appointed for that purpose.

Lunatics.—The term "lunatic" is here used in the sense of lunatic so found by inquisition. As to meanings of "lunatic," see *ante* p. 3.

Persons of unsound mind.—See preceding note, and see *ante* p. 4.

Not so found.—See notes to sec. 90 of the Act of 1890, *ante*, as to inquisitions.

Before . . . principal Act, i.e. the Judicature Act 1873, which passed on 5th August 1873.

Old law as to lunatics, etc., suing.

Sued as plaintiffs.—It was formerly held that idiots, madmen, and lunatics, and such as were born deaf and dumb were incapable of suing at all.[3] But by the seventeenth century actions could be maintained on their behalf.[4]

Effect of present rule.

The effect of the present rule is to make the procedure in Chancery in regard to lunatics and persons of unsound mind not so found by inquisition govern all cases.

Lunatic so found sues by committee.

Sued as defendants.—As to liability of lunatic to be sued in contract and in tort, see *ante* pp. 12 and 64.

With previous sanction of Court in Lunacy.

Sue by their committee.—A lunatic so found sues by the committee of his estate, who must, however, previously obtain[5] the sanction of the Court in Lunacy, on peril of having his costs disallowed on the passing of his accounts;[6] and any person officiously constituting himself protector of a lunatic's rights, does so entirely at his own risk as to costs and otherwise.[7] This latter proposition applies to a receiver even if he is acting *bonâ fide*.[8]

Exceptions.

The committee sues in his own name as plaintiff, the lunatic being joined as co-plaintiff.[9] If, however, the committee has an adverse interest, or there is

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[1] *Brewster* v. *Thorpe*, 1847, 11 Jur. 6.

[2] See *ante* p. 164.

[3] Co. Litt. 135 (*b*).

[4] *Ib.* The idiot appeared in person, and then any one who prayed to be admitted as his friend might sue for him; the lunatic appeared by guardian, if under age, and by attorney if of full age. Brook's Abr. tit. Idiot, 4 Rep. 124 (*b*); Co. Litt. 135 (*b*), and note by Harg.; *Dennis* v. *Dennis*, 23 Car. II., 2 Saund. Rep. 328; *Dennis* v. *Phrasier* or *Frazier*, 22 & 23 Car. II., 2 Keb. 691, 752.

[5] By certificate from the Master in Lunacy obtained on summons and confirmed by the Judge in Lunacy. The summons should be supported by evidence showing the propriety of the action which it is proposed to bring (1 Dan. Ch. Pr. 118).

[6] Cp. *Foot* v. *Leslie*, 1885, 16 L.R. Ir., at p. 417; cp. *re Notley*, 1839, 3 Jur. 719; *Simpson* v. *L. and N.W. Ry. Co.* 1863, 1 N.R. 562.

[7] *Beall* v. *Smith*, 1873, L.R. 9 Ch., at p. 92.

[8] Cp. *re Montgomery*, 1828, 1 Moll. 419; *re Kilkenny*, 1845, 7 Ir. Eq. 594; *re Doolan*, 1843, 2 Con. & Law. 232.

[9] 1 Dan. Ch. Pr. 117; *Fuller* v. *Lance*, 14 & 15 Car. II. 1 Cas. in Chan. 19; *Woolfryes* v. *Woolfryes*, 1824, cit. 1 Dan. Ch. Pr. 117 note (*e*); *Bishop of London* v. *Nichols*, 1723,

a question which the Court thinks ought not to be decided at the expense of the lunatic's estate, the lunatic will sue by his next friend, the committee being before the Court as a co-defendant.[1] If a person bringing an action be either an idiot or a lunatic, and no next friend or committee is named in the writ of summons, the proper course for the defendant would it seems[2] be to apply by summons, on notice to stay proceedings, until a next friend be named. Where a plaintiff becomes lunatic *pendente lite*, or a new committee is appointed, an order to carry on the proceedings by the committee or new committee should be obtained.[3] As to proceedings, see Order xvii. rr. 4-7.

After judgment in an action, execution may be stayed till the Court has been informed of the result of an inquisition.[4]

Position of *curator bonis*.

A curator bonis duly appointed by a Scotch, foreign, or colonial Court stands in the same position as a committee in regard to suing in England in the name of the lunatic under his care or charge.[5] The committee of a lunatic appointed in England can sue on his behalf personal actions or actions relative to personal estate in Scotland,[6] but it has been doubted whether such committee can sue actions relative to Scotch heritage.[7]

And of English committee in Scotland.

Provision of next friend.

Or next friend.—As to when lunatic so found by inquisition sues by next friend, see last preceding note.

The practice as to the appointment, etc., of next friends of persons of unsound mind is the same, *mutatis mutandis*, as in the case of infants, as to which, see 1 Dan. Ch. Pr. 111-113.

Actions which next friend could not bring.

It was formerly held that a next friend could not bring actions on behalf of a person of unsound mind for the purpose of dealing with his real estate,[8] while actions for the purpose of protecting the estate from loss or injury could be so brought.[9] This distinction was probably due in part to the principle that in the absence of the person of unsound mind his property ought to be left as far as possible in the state in which it was.[10] But it is now clear that an action *primâ facie* for the benefit of a person of unsound mind may be instituted even if it affects his real estate.[11]

Bunb. 141. The same holds good in the case of applications respecting the lunatic's property (*re Bourke*, 1864, 2 De G. J. & S. 426; *re Jordan*, 1875, L.R. 10 Ch. 192). In this last case the next friend was not required to give security for costs, and the committee was only made a formal defendant. Where no committee has been appointed or the committee has an adverse interest, the Attorney-General may bring an action on behalf of the lunatic (*A.-G.* v. *Parkhurst*, 20 Car. II. 1 Ch. Ca. 112; *A.-G.* v. *Woolrich*, 1669, *ib.* 153; *A.-G.* v. *Tyler*, 1764, 2 Eden 230). In this case there must also be a relator (not the lunatic) to be responsible to the defendant for costs (*A.-G.* v. *Tyler*, *ubi sup.*).

[1] *Ubi sup.* p. 1014, note 9.

[2] 1 Dan. Ch. Pr. 117; and cp. *ex parte Brocklebank*, 1877, 6 Ch.D., at p. 360.

[3] 1 Dan. Ch. Pr. 118.

[4] *Hartley* v. *Gilbert*, 1843, 13 Sim. 596.

[5] Cp. *Scott* v. *Bentley*, 1855, 1 K. & J. 281; *Grimwood* v. *Bartels*, 1877, 46 L.J. Ch. 788; *Sylva* v. *Da Costa*, 1803, 8 Ves. 316; *re Barlow's Will*, 1887, 36 Ch.D. 287; and see sec. 131 of the Act of 1890, *ante*, and also *ante* p. 274.

[6] Mackay's "Manual of Practice," p. 150; and cp. *Morrison* v. *Earl of Sutherland*, 1749, M. 4595; 1750, 1 Paton's App. 454, overruled by *Rose* v. *Grant*, 1835, 13 S. 878.

[7] *Gordon* v. *Earl of Stair*, 1835, 13 S. 1073.

[8] *Halfhide* v. *Robinson*, 1874, L.R. 9 Ch. 373.

[9] Cp. *Light* v. *Light*, 1858, 25 Beav. 248; *Jones* v. *Lloyd*, 1874, L.R. 18 Eq. 265; *Fisher* v. *Melles*, 1870, *ib.* 268; *Beall* v. *Smith*, 1874, L.R. 9 Ch. 85.

[10] Cp. per Bowen, L.J., in *Porter* v. *Porter*, 1888, 37 Ch.D., at p. 430.

[11] *Porter* v. *Porter*, 1888, *ubi sup.*, at p. 420; and *Watt* v. *Leach*, 1878, 26 W.R. 475. An ejectment action may be stayed if the Court is of opinion that it is not in the interest of the lunatic (*Waterhouse* v. *Worsnop*, 1888, 59 L.T., N.S., 140). Cp. *Coleman* v. *Croker*, 1790, 1 Ves. jun. 160.

Semble, an action instituted by a next friend on behalf of a person of unsound mind is arrested if the latter is found lunatic.[1] In such a case the committee when appointed may obtain leave to continue the action.[1]

A next friend before consenting to any departure from the ordinary mode of procedure should obtain the sanction of the Court or a judge,[2] as improper proceedings may involve him in costs and the risk of repudiation of his conduct by the person of unsound mind if he should recover his sanity, and even of attachment by the Court.[3]

A next friend who filed a bill on behalf of a person who proved to be really of sound mind has been ordered to pay the plaintiff's costs as between solicitor and client, and those of the defendant as between party and party.[4]

Written authority of next friend necessary.

Before the name of any person is used as next friend his written authority should be obtained by the solicitor acting for the person of unsound mind, and filed in the Central Office or district registry as the case may be (R.S.C. Order xvi. r. 20). The consent of the committee or next friend as to the mode of taking evidence or other procedure, if given with the sanction of the Court or a judge, and in the case of a committee also with that of the Judge in Lunacy, is to be of the same force as if the lunatic or person of unsound mind were under no disability (*ib.* r. 21).

Next friend not a "party" under Order xxxi. r. 12.

A next friend is not a "party" to the action, and therefore cannot be required, under Order xxxi. r. 12, to make discovery of documents in his possession.[5]

Rights of creditors, etc., against lunatics.

May in like manner defend.—Subject, in the case of a person who has been brought under the jurisdiction in lunacy, to the right of the Judge in Lunacy to secure the lunatic's maintenance (see *ante* pp. 366 *et seq.*), the creditors, etc., of a lunatic or person of unsound mind have the same remedies against him as if he had been sane.

The committee requires no order to enable him to defend, but must obtain the sanction of the Judge in Lunacy. In *re Manson*,[6] the Court refused to make a prospective order as to his costs. If no committee has been appointed, or the committee has an adverse interest, an order appointing a guardian should be obtained in the manner described above in regard to actions by lunatics so found.[7]

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[1] Cp. *Harland* v. *Garbutt*, 1881, W.N. 1881, p. 8; *Powell* v. *Powell*, 1882, 26 S.J. 465; *Green* v. *Pratt*, 1879, 41 L.T., N.S., 30; *Waterhouse* v. *Worsnop*, 1888, 59 L.T. 140.

[2] Cp. *Fryer* v. *Wiseman*, 1876, 24 W.R. 205; no such approval is necessary in regard to the ordinary proceedings, *e.g.* taking evidence on affidavits (see *Knatchbull* v. *Fowle*, 1876, 1 Ch.D. 604), or compromise (*Leeming* v. *Murray*, 1879, 13 Ch.D. 123), unless the interest of the lunatic or person of unsound mind is clearly involved. Cp. *Rhodes* v. *Swithenbank*, 1889, 22 Q.B.D. 577; *Lawson* v. *Quare*, 1887, 84 L.T. Jo. 25, and Order xvi. r. 21. A committee requires the sanction also of the Judge in Lunacy (see *ante* p. 1014).

[3] Cp. *Beall* v. *Smith*, 1873, L.R. 9 Ch. 85.

[4] *Palmer* v. *Walesby*, 1868, L.R. 3 Ch. 732.

[5] *Lawton* v. *Elwes*, 1883, 31 W.R. 414; *Dyke* v. *Stephens*, 1885, 30 Ch.D. 189. In the former case Kay, L.J., said that discovery could be obtained in the case of an application against a next friend personally by *subpœna duces tecum*.

[6] 1852, 21 L.J., N.S., Ch. 249.

[7] See *ante* p. 1012; and see *Snell v. Hyat*, 1756, 1 Dick. 287; *Hartland* v. *Atcherley*, 1844, 7 Beav. 53; *Worth* v. *Mackenzie*, 1851, 3 Mac. & G. 363. For form of order, *Greaves* v. *Great Northern Ry. Co.*, 1854, 2 Eq. Rep. 516. Where a lunatic is so found in Ireland, and has an Irish committee, a guardian *ad litem* will not be appointed, but the transcript of the inquisition will be brought into the English Court, and the lunatic and his committee will defend together (*Hartland* v. *Atcherley*, *ubi sup.*).

As to service of writ, see Order ix. r. 5, *ante*. As to default of appearance, see Order xiii. r. 1, *ante*.

As to appointment of guardian *ad litem*, see *ante* p. 1012.

Allegations of facts in pleadings though denied specifically or by necessary implication are not to be taken as admitted against lunatics or persons of unsound mind not so found (cp. Order xix. r. 13).

The defence of a lunatic so found put in by his committee may be read against him ; *aliter*, it appears in the case of the guardian of a lunatic not so found or imbecile person.[1]

Enforcement of judgment against lunatic.

A judgment against a lunatic so found or brought under the jurisdiction in lunacy can only be enforced through the Court in Lunacy. The proper order is to direct the committee to apply to the Judge in Lunacy for liberty to satisfy the judgment debt out of the lunatic's property ; and if he fail to comply with such an order, an application may be made for an order against him. Such application can only be made to the Judge in Lunacy.[2]

Savings for lunacy.

There is a saving for lunacy in regard to specialty debts under 3 & 4 Will. IV. c. 42, sec. 3, simple contracts and torts under 21 Jac. I. sec. 16—the time running against the lunatic from the date of his recovery. Time will not run against a lunatic who has no committee in regard to money [3] charged on any real estate or legacy, inasmuch as he is not capable of giving a discharge or release for such money within sec. 8 of the Act of 1874 (37 & 38 Vict. c. 57).[4] Where a creditor cannot recover a debt against a lunatic, owing to the action of the Court in Lunacy, the case is taken out of the Statute of Limitations.[5]

There is no provision in the Rules of Court creating a saving for lunacy in regard to the right of appeal. But the omission could be rectified by special leave extending the time for appealing. As to actions to perpetuate testimony, see *Smith* v. *A.-G.*, 1777, cit. 1 Vern. 105, and *re Stoer*, 1884, 9 P.D. 120.

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[1] *Leving* v. *Caverly*, 1704, Prec. Ch. 229 ; *Crawford* v. *Kernaghan*, 1837, 1 Dr. & War. 195 ; *Wilds* v. *Davis*, 1840, 4 Jur. 715 ; *Micklethwaite* v. *Atkinson*, 1844, 1 Coll. 173, and other cases there cited ; *Percival* v. *Caney*, 1850-51, 4 De G. & S. 610.

[2] *Ames* v. *Parkinson*, 1847, 2 Ph. 388.

[3] Or death, if he die *non compos*, in which case his executor or administrator may sue (cp. *Townsend* v. *Deacon*, 1849, 3 Ex. 706). The lunacy of an executor who has proved his testator's will is no bar to the statutes of limitations (*Boldero* v. *Halpin*, 1871, 19 W.R. 320 ; *aliter*, however, where the Court, acting on behalf of the lunatic, has carried the fund to the credit of an account the title of which recognises the legatee's claim (*re Walker*, 1871, L.R. 7 Ch. 120).

[4] Cp. *Binns* v. *Nichols*, 1863, L.R. 2 Eq. 256, 260 ; query, however, whether the same rule would apply to a lunatic who has a committee.

[5] *Stedman* v. *Hart*, 1854, Kay, at p. 612.

LUNACY IN REGARD TO PRESCRIPTION AND LIMITATION.

Prescription.

Lunacy excluded from computation of prescriptive periods.

Under the Prescription Act 1832 (2 & 3 Will. IV. c. 71), sec. 7, the time during which any person otherwise capable of resisting any claim to rights of common and other profits *à prendre*, ways, easements, watercourses, and light is an idiot or *non compos mentis* is excluded in the computation of the statutory periods of prescription,[1] except in the cases where the right or claim is declared by the Act to be indefeasible, viz. (1) where the right, profit, and benefit has been taken and enjoyed without interruption for the full period of sixty years (sec. 1); (2) where any way, or other easement, or any watercourse, or the use of any water has been enjoyed without interruption for the full period of forty years (sec. 2); (3) where the access and use of light has been uninterruptedly enjoyed for the full period of twenty years (sec. 3): unless in any of these cases it appears "that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writ."

Except where prescriptive right declared indefeasible.

Limitation.

Lunatics regarded as under disability. Grounds of disability under Act of 1833.

Lunatics are regarded under the Statutes of Limitations as persons under a disability. Under the Real Property Limitations Act 1833 (3 & 4 Will. IV. c. 27), sec. 16, the following are the grounds given for disability: infancy, coverture, idiocy, lunacy, unsoundness of mind, or absence beyond seas, which last ground, however, is removed by the Real Property Limitation Act 1874 (37 & 38 Vict. c. 57), with which such part of the Act of 1833 (3 & 4 Will. IV. c. 27) as is not repealed thereby, must be read.

Effect of disability under the Limitation Acts.

Disability under these statutes in some, but not in all, cases prevents the statutes from applying.

State of law prior to Limitation Acts.

To understand the effect of the operation of the Statutes of Limitations, it is necessary to say something on the state of the law in relation to persons under a disability prior to the passing of the Acts now in force.

No fixed periods of limitations at common law. 32 Hen. VIII. c. 2.

At common law there were no fixed periods within which it was necessary to commence actions. The principal statutes relating to the subject were 32 Hen. VIII. c. 2, which enacted that "no person should maintain any writ of right, or make any prescription, title, or claim to or for any lands, etc., of the possession of his ancestor or predecessor, and declare and allege any further seisin or possession of his ancestor or predecessor but within sixty years next before the teste of the said writ or next before the said prescription, title,

[1] Cp. *Wright* v. *Williams*, 1836, Tyr. & Gr. 375.

and claim so made" (Shelford's *Real Property Statutes*, p. 112, 3rd edition). The statute 21 Jac. I. c. 16, gave the limit of twenty years in any writ of formedon. This limited the right of ejectment to twenty years, for no ejectment could be brought unless the lessor of the plaintiff was entitled to enter on the lands, and by that statute no entry could be made unless within twenty years after the right should accrue. Prior to the passing of this statute it was held[1] that where a lunatic sued not livery, no mean rates run against him, because no laches could be imputed to him, he being lunatic both before and ever since the deaths of his ancestors, and the laches of his friends should not hurt him. Otherwise it will, if he had been at any time *sanae memoriae* since the death of his ancestor. This decision still forms the basis of the existing law. Disability will under certain circumstances prevent the statutes from commencing to run. When, however, they have once begun to run, no subsequent disability will prevent their continued operation.[2]

21 Jac. I. c. 16.

Burcher's case.

Still basis of existing law.

The second section of the Act 21 Jac. I. c. 16, provided that "if any person or persons that shall be entitled to any such writ or writs, or that shall have such right or title of entry, shall be, at the time of the said right or title first descended, accrued, *non compos mentis*, then such person and persons, and his and their heirs shall or may, notwithstanding the said twenty years be expired, bring his action or make his entry as he might have done before this Act, within the ten years next after his and their coming of sound mind, but not afterwards."

It was held in *Cotterell* v. *Dutton*,[3] which was a case on the 21 Jac. I. c. 16, that this statute ran without intermission from the time when the disabilities first ceased, and applied equally to the issue in tail as to other heirs, or, as Gibbs, J., put it, "when the statute begins to run, nothing stops it."[4]

Cotterell v. *Dutton.*

We pass now to the existing statutes. Sec. 2 of the Real Property Limitations Act 1833 (3 & 4 Will. IV. c. 27), which is repealed, but with a saving as to the alteration of the limit of twenty to twelve years, provides that no person is to make an entry or distress or bring an action or suit to recover any land or rent; but within twenty years after the right of action accrued to the claimant. Sec. 3 of the same Act, which is unrepealed (but which, like the other unrepealed portions of the Act 3 & 4 Will. IV. c. 27, must be construed with 37 & 38 Vict. c. 57, see sec. 9), provides "that in the construction of this Act, the right to make an entry or distress, or bring an action to recover any land or rent, shall have been deemed to have accrued (1) when the estate or interest claimed has been in possession, at the time of dispossession, or discontinuance of possession, or at the last time at which any profits or rent were or was received; (2) when the person claiming such land or rent shall claim the estate or interest of some deceased person who shall have continued in such possession

Existing statutes. 3 & 4 Will. IV. c. 27, sec. 2.

3 & 4 Will. IV. c. 27, sec. 3. When right deemed to have accrued.

(1) When estate in possession. On dispossession.

(2) Estate or interest of deceased person.

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[1] *Burcher's case*, 11 Jac. I., Hob. 137.

[2] *Doe d. Duroure* v. *Jones*, 1791, 4 T.R. 310; *Sturt* v. *Mellish*, 1743, 2 Atk. 610, 614; Shelf. Lun., p. 522.

[3] 1813, 4 Taunt. 826.

[4] 4 Taunt., p. 830.

or receipt in respect of the same estate or interest until the time of his death, and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, at the time of such death; (3) when the person claiming such land or rent shall claim in respect of an estate or interest in possession granted, appointed, or otherwise assumed by any instrument (other than a will) to him, or some person through whom he claims, by a person being in respect of the same estate or interest in the possession or receipt of the profits of the land or in the receipt of the rent, and no person entitled under such instrument shall have been in such possession or receipt, at the time at which the person claiming as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument; (4) when the estate or interest claimed shall have been an estate or interest in reversion or remainder or other future estate or interest, and no person shall have obtained the possession or receipt of the profits of such land, or the receipt of such rent in respect of such estate or interest, at the time at which such estate or interest became an estate or interest in possession; and (5) when the person claiming such land or rent, or the person through whom he claims shall have become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred, or such condition was broken.

On death. (3) Estate or interest by alienation.

On alienation.

(4) In case of future estates.

On estate or interest becoming in possession.

(5) Forfeiture or breach of condition.

3 & 4 Will. IV. c. 27, sec. 12. Coparceners.

Sec. 12 provides that the possession or receipt of one or more of several persons entitled to any land or rent as coparceners, joint-tenants, or tenants in common, shall not be deemed to be the possession or receipt of the others.

3 & 4 Will. IV. c. 27, sec. 13. Possession of younger brother.

Sec. 13 provides that the possession of a younger brother is not to be deemed the possession of the heir, and by sec. 14 an acknowledgment in writing given to the person or his agent is equivalent to promise or receipt of rent.

Acknowledgment when equivalent to possession. 3 & 4 Will. IV. c. 27, secs. 16 & 17.

Secs. 16 and 17 are repealed by the Real Property Limitation Act 1874 (37 & 38 Vict. c. 57), sec. 9. They are, however, except as to disability from absence beyond sea, and as to the limit of time, practically re-enacted by secs. 3 and 5 of that statute, and, therefore, cases decided on secs. 16 and 17 of the former Act must apply to them.

Act of 1874, sec. 3.

Sec. 3 provides that in cases of lunacy at the time at which the right of action shall have first accrued, the period of twelve years or six years (as the case may be) is to be allowed from the disability or previous death (whichever of these two events shall have first happened).

Act of 1874, sec. 5.

Sec. 5 of the same statute enacts that thirty years is to be the utmost allowance for disabilities.

Act of 1833, sec. 25.

Sec. 25 of the Act of 1833 provides that in the case of an express trust, no right shall be deemed to have accrued to the *cestui que trust* to bring an action until a conveyance of the land or rent has been made to a purchaser for valuable consideration. The effect of this enactment is, however, considerably modified by the Trustee Act 1888 (51 & 52 Vict. c. 59, see secs. 1, 8, 12), which provides

Modified by Trustee Act 1888.

that except in cases where the claim is founded on any fraud,[1] to which the trustee was privy, or is to recover trust property or the proceeds thereof still retained by the trustee or converted by him to his own use, the Statute of Limitations may be pleaded in like manner as if the trustee or the person claiming through him had not been a trustee or a person claiming through a trustee.

Act of 1833, sec. 29. Ecclesiastical property.

Sec. 29 provides that no ecclesiastical property shall be recovered but within the space of two successive incumbencies and six years afterwards, if such period amounts to sixty years; but if not, such a period as added to the six years will make up the term of sixty.

Extinction of right on expiry of period of limitation.

Sec. 34 provides for the utter extinguishment of the title of the party out of possession to the land, rent, or advowson in respect of which he might have brought an action.

Arrears of dower.

By sec. 41, no arrears of dower are to be recovered for more than the six years next before the commencement of the action or suit.

Arrears of rent or interest.

Sec. 42 provides that no arrears of rent or interest on money charged on any land or on any legacy shall be recovered, but within six years after becoming due, or after a written acknowledgment of the same, signed by the person liable or his agent; but when a prior mortgagee has been in possession of land within one year before action brought by a subsequent mortgagee, such subsequent mortgagee may recover all arrears of interest accrued due while the prior mortgagee was in possession, although they exceed six years.

Meaning of word "rent" in Acts of 1833 & 1874.

The word rent in the Act of 1833 (3 & 4 Will. IV. c. 27), and therefore also in that of 1874 (37 & 38 Vict. c. 57), in so far as it affects the former Act, does not refer to "rents reserved on leases for years by contract between the parties as the conventional equivalent for the right of occupation, but is confined to rents existing as an inheritance distinct from the land, such as ancient rent services for farm rents or the like." Accordingly a person entitled to the reversion expectant on the determination of a lease might distrain for the rent thereby reserved, although no payment in respect thereof had been made for more than the statutory period.[2]

Construction of sec. 3 of Act of 1833.

Sec. 3 of the Act of 1833 (3 & 4 Will. IV. c. 27) will be construed literally, having regard to the principle adopted by the Courts in the cases on the repealed Statutes of Limitations, although the result may be to make the protection afforded to the lunatic thereby in some matters illusory. Thus, "where a party has been in receipt of rents, and afterwards discontinues such receipt, the statute fixes the point from which time is to run at the day on which the last payment was made, and the party claiming has not the option of calculating from the time when he discontinued the receipt of rent." In construing this section, Patteson, J., in *De Beauvoir* v. *Owen*,[3] said: "The inconvenience of a person coming under disability after

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[1] To procure the execution of instruments of conveyance and devise by a person of unsound mind is a fraud within sec. 26 of the Act of 1833 (3 & 4 Will. IV. c. 27), *Lewis* v. *Thomas*, 1843, 3 Ha. 26; *Barron* v. *Martin*, 1815, Coop. 189.

[2] *Grant* v. *Ellis*, 1841, 9 M. & W. 113; Goodeve, *Law of Real Property*, p. 365.

[3] 1850, 5 Ex. 166-82.

the receipt of rent, and before the right of action accrued, was strongly pressed, and it is indeed more substantial; but it is to be observed that the Legislature in passing this Act has in a much more important instance left the rights of persons under disability unprotected, inasmuch as sec. 42, which bars the recovery of arrears after six years, has no proviso in favour of such persons. The circumstance, therefore, of their not being perfectly protected by the 16th section does afford a ground for presuming against a construction which involves that consequence."[1] It will be apparent from the judgment in this case that the principle of the law remains what it was under the old Statutes of Limitations. As has been observed above, there is under the 16th section no protection for any disability. It may be added that the same is the case with the sections in the Act which relate to Church property and advowsons.

Principle of law same as under old statutes.

Sec. 12, which in no way altered the previously existing law, will prevent the disability of one of two or more parceners from preserving the title of other or others not under disability.[2]

The effect of sec. 9 of the Act of 1874 (37 & 38 Vict. c. 57) is that no right to recover on the ground of any disability can last longer than thirty years, since the term at which the right of action first accrued. Sec. 18 of the Act of 1833 (3 & 4 Will. IV. c. 27) prevents successive disabilities in different persons from extending the period within which the statute will run, and this section is retrospective,[3] while in the case of the same person a succession of disabilities extends the period to six years after the last disability is removed.[4] As to savings for lunacy, see further, *ante* p. 1017.

Successive disabilities.

Part I. chap. i. p. 14, n. 1.

CIRCULAR OF COMMISSIONERS IN LUNACY AS TO PROPERTY OF PATIENTS, 20TH FEBRUARY 1880.

As a general rule, Proprietors and Superintendents, having charge of persons as of unsound mind, ought not, in any circumstances, to sanction, or knowingly afford facilities for, the signature by such persons of deeds or documents, cheques or other papers, disposing of or otherwise affecting property or income.

Where it becomes necessary to deal with the property of a person of unsound mind, under detention as such, or with property vested in him as a trustee or otherwise, resort should always be had to the authority of the Lord Chancellor, and the provisions of the Lunacy Regulation Acts, the Trustees' Relief Act, or other statutes applicable to the circumstances.

Persons in charge of certificated patients should, the Commissioners think, not merely refuse to allow their execution of deeds or their signature of documents, but, where they have cause to suspect the patient's friends of any unavowed intention to procure such signatures, should take steps to prevent it.[5]

(By Order), C. S. PERCEVAL, *Secretary*.

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[1] *Owen* v. *De Beauvoir*, 1847, 16 M. & W. 547.

[2] *Roe d. Langdon* v. *Rowlston*, 1810, 2 Taunt. 441.

[3] *Devine* v. *Holloway*, 1861, 9 W.R. 642.

[4] *Borrows* v. *Ellison*, 1871, L.R. 6 Ex. 128; *Supple* v. *Raymond*, 1830, 1 Hayes Ir. 6.

[5] It will be observed that the making of wills by patients is not struck at by this circular. In point of fact, neither the Chancery Visitors nor the Commissioners in Lunacy place any obstacle in the way of a patient's making his will. He should be advised to procure and attach to his will medical certificates as to his testamentary capacity at the time of execution. See *Wright* v. *Proud*, 1806, 13 Ves. 136.

POINTS OF IMPORTANCE IN REVISED CIRCULAR OF LUNACY COMMISSIONERS AS TO SINGLE PATIENTS, 1st September 1895.

s. 4, subs. (1) of Act of 1890, *ante* p. 87.

Lunacy.

Lunacy Act 1890 (53 Vict. c. 5).

Lunacy Act 1891 (54 & 55 Vict. c. 65).

Provisions of the Law as to Single Patients.

Where a patient already detained under a proper reception order is, with the consent of a Commissioner, transferred to new care, a *fresh* order and *fresh* certificates are *not* required by the person taking charge on such transfer. Lunacy Act 1890, s. 36.

Caution.

If removed temporarily without the written consent of a Commissioner previously obtained, the patient will become discharged *by operation of law, and for his continued detention a* fresh Reception Order *will be absolutely necessary. This will also be the case if the patient is removed temporarily, after consent obtained, to any place other than that named in such consent; and, further, if he be not brought back before the expiration of the period for which the consent has been granted.* Lunacy Act 1890, s. 58.

See Circular of Local Government Board as to points to be attended to in the construction of imbecile wards, September 1891. s. 24 of Act of 1890, *ante*.

CIRCULAR OF LOCAL GOVERNMENT BOARD AS TO EXAMINATION OF LUNATICS IN WORKHOUSES, 1st June 1896.

s. 24, subs. (1) of Act of 1890, *ante* p. 140.

The persons of all lunatics should immediately, upon their admission into the workhouse, and upon their departure from it, be carefully examined by the medical officer.[1]

The examination should be of such a character as will permit of the medical officer ascertaining and certifying from personal knowledge not only the facts as to the existence of any disease, but also as to the presence or absence of any bruises or other injuries. The medical officer should also, in connection with his examination of a lunatic who is proposed to be removed from the workhouse, consider whether the physical condition of the patient is such that he can properly be removed. If the removal should from any cause be delayed until the day following that upon which the medical examination was made, the patient should be again seen by the medical officer prior to the patient leaving the workhouse.

The examination of the lunatic by the medical officer will not in any way relieve any other medical practitioner who may be called upon to give a certificate under the Lunacy Act 1890 of his duty of personally examining the lunatic with the view of assuring himself of the facts indicating insanity, and of ascertaining that the lunatic is in a fit condition of bodily health to be removed to an asylum.

When a lunatic is detained in the workhouse the patient should be, both by day and by night, under the immediate charge of paid officers. If, however, it is found impracticable to dispense entirely with pauper assistance, such assistance should only be employed under the closest supervision of responsible officers.

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[1] The Local Government Board inquiries into cases affecting lunatics in workhouses are held under the general jurisdiction of that department over their own officers.

s. 38 of Act of 1890, *ante*.

(For use by Commissioners in Lunacy only.)

No. SPECIAL REPORT AND CERTIFICATE.[1]

Name of Patient

Date of Admission day of 189

_____ *Asylum* [*or Hospital, or Licensed House*].

I have this day seen and examined the above-named patient, admitted into this asylum [or hospital, or house], under reception order, dated the day of 189 , [and which order was continued by special report and certificate dated the day of 189], and I beg to report that with regard to mental condition, he [or she] is

and with regard to bodily condition, he [or she] is

and I hereby certify that he [or she] is still of unsound mind, and a proper person to be detained under care and treatment.

Medical Superintendent [*or Medical Officer*].

To the Dated 189 .

Commissioners in Lunacy.

s. 39 of Act of 1890, *ante*.

CIRCULAR OF COMMISSIONERS AS TO STATEMENT AS TO "MENTAL STATE," AND "BODILY CONDITION," 15TH NOVEMBER 1881.

The Commissioners in Lunacy would suggest as to "mental state," that while clearly recording whether or no the patient is insane, the leading symptoms should be noticed rather than the form of disorder; and that, in addition to the state of the general health and presence of internal or other disease, the bodily condition should be mentioned, reporting any recent injuries or appearances, such as contraction of limbs, bed-sores, or great emaciation, especially where neglect or ill-treatment are suspected, and distinguishing injuries present on admission from any received after admission.

By order of the Board,

C. S. PERCEVAL, *Secretary.*

s. 42 of Act of 1890, *ante*.

ORDER OF COMMISSIONERS WITH REGARD TO PRINTED NOTICES AS TO LETTERS AND INTERVIEWS, THE LUNACY ACT 1890, SEC. 42.

The Commissioners in Lunacy do hereby direct that there shall, unless there is no private patient therein, be posted up in every institution for lunatics the printed notices as to letters and interviews mentioned in sec. 42 of the Lunacy Act 1890.

The notices are to be posted in such places as the next visiting Commissioners or visitors shall direct.

Dated at the office of the Commissioners in Lunacy, 19 Whitehall Place, in the County of Middlesex, this 14th day of May 1890.

By order of the Board,

G. HAROLD URMSON, *Secretary.*

19 Whitehall Place, London, S.W.

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[1] *Size of Paper to be used for Documents.*—"It will greatly facilitate the work of the Commissioners' Office if paper of an uniform size be used for all returns and other documents sent to it.

The most convenient size is ordinary foolscap, and it is requested that paper of this size may be used for all copies of petitions, reception orders and certificates, returns of all kinds, and other documents forwarded to the Commissioners, who further request that all formal documents may, as far as possible, have printed at the head of the first page the name of the institution to which they relate."—Circular of Commissioners, 16th April 1890.

LETTER OF COMMISSIONERS AS TO ESCAPE OF DANGEROUS PATIENTS, 21st December 1891.

87 of Act 1890, *ante*.

In compliance with views expressed by the Secretary of State, the Commissioners desire to recommend that when the mental condition or known disposition of any escaped patients is such that they, while at large, are at all likely to commit an offence, or to be dangerous to themselves or others, and are not soon speedily recaptured by the staff of the institution, early notice of the escape should always be given to the local police, in order that their assistance may be afforded in securing the patients.

ORDER, DATED JANUARY 26, 1891, MADE BY THE LORD CHANCELLOR, WITH THE CONSENT OF THE TREASURY, PRESCRIBING ALLOWANCES FOR SUBSISTENCE, ETC., TO MASTERS AND VISITORS IN LUNACY.

ss. 111 and 163 of Act of 1890, *ante*.

It is ordered and directed, with the sanction of the Lords Commissioners of Her Majesty's Treasury, that the amount of expenses to be allowed in the case of every Master in Lunacy and Visitor of lunatics hereafter appointed under the Lunacy Act 1890,[1] shall be as follows, viz. his actual outlay in travelling in the performance of his duties as such Master or Visitor, and one pound eleven shillings and sixpence for each night's absence from home, or ten shillings and sixpence for each day's absence of more than ten consecutive hours, or the actual outlay on subsistence during the time of any necessary absence after 8.30 P.M., for his expenses and subsistence; and fifteen shillings for each night's absence from home, or five shillings for each day's absence of more than ten consecutive hours for the expenses and subsistence of a clerk (when accompanying a Master in Lunacy), every such night's absence including a period of twenty-four hours; all such allowances for travelling and other expenses and subsistence as aforesaid to be paid on such days and in such manner as the said Lords Commissioners shall from time to time direct.

The 26th day of January 1891.

(Signed)

Halsbury, *C.*

We approve.

Sidney Herbert,
Herbert Eustace Maxwell,
Lords Commissioners of Her Majesty's Treasury.

ORDER AS TO THE FEES AND PERCENTAGES, UNDER SECTION 148 OF THE LUNACY ACT 1890, WHICH ARE REQUIRED TO BE TAKEN FOR LUNACY PROCEEDINGS IN THE HIGH COURT OF JUSTICE AND COURT OF APPEAL BY MEANS OF STAMPS.

148 of Act of 1890, *ante*.

Whereas, by sec. 3 of the Public Offices Fees Act 1879, it is provided that the Treasury may from time to time make, and when made, revoke, alter, and add to regulations for all or any of the following purposes respecting fees in any public office; that is to say:—

1. Regulating the manner in which the fees taken in money are to be taken, accounted for, and paid over.
2. Determining the use of impressed or adhesive stamps, and the mode of cancellation of adhesive stamps.
3. Regulating the use of stamps and prescribing the application thereof to documents from time to time in use, and requiring documents to be used for the purpose of such stamps.

Provided that any such regulations which may relate to the office of any court of law shall be made with the consent of the Lord Chancellor.

Now we, the undersigned, being two of the Lords of Her Majesty's Treasury, do,

[1] 53 & 54 Vict. c. 5.

with the concurrence of the Lord Chancellor, hereby give notice, and order and direct—

That, from and after the date of this order, in lieu of any regulations on the subject heretofore in force, the whole of the fees and percentages imposed by the rules made under sec. 148 of the Lunacy Act 1890, shall be taken in stamps, and that the stamps employed for the purpose shall, in all cases, except for the fees payable for copies of documents, be impressed. The stamps for denoting the fees payable for copies of documents shall be either impressed or adhesive.

The impressed stamps herein referred to shall be of such a character as the Commissioners of Inland Revenue may, from time to time, adopt for the purpose, whilst the adhesive stamps shall be of the description used for judicature fees generally, such adhesive stamps to be cancelled by the various court or other officers, either by perforation or in such manner as the said Commissioners may from time to time direct.

The official forms, with impressed or adhesive stamps (as the case may be), required in any proceedings under the said Act shall be sold at the Inland Revenue Office, Royal Courts of Justice.

And we do further direct that this order shall be binding on all courts, officers, and persons whom it may in any way affect.

(Signed) Sidney Herbert,
Herbert Eustace Maxwell,
Two of the Lords of Her Majesty's Treasury.

Dated the 11th day of August 1892.

I concur in this order.
(Signed) Halsbury, *C.*

s. 169 of Act of 1890, *ante.*

CIRCULAR OF LOCAL GOVERNMENT BOARD AS TO COMMITTEES OF VISITORS OF PAUPER LUNATIC ASYLUMS.

17th August 1889.

The law officers consider that a committee of visitors, appointed by a county council, possess all the powers of a committee of visitors under the Lunatic Asylums Act 1853. The law officers think that the committee of visitors are a body constituted under that Act and the Local Government Act 1888, and not a mere committee existing at the will of the county council, and that hence sec. 28, subs. (2) of the Act of 1888 does not apply to them.

The law officers advise that it is not necessary that all receipts from whatever source arising, and all expenditure on account of pauper lunatic asylums, should be paid respectively into and out of the county fund, but only such receipts and expenditure as were heretofore received, or paid, by the treasurer of the county. They also think that it is not requisite that payments, in respect of which the visiting committee is entitled to make an order on the treasurer of the county, should be authorised by the finance committee as prescribed in sec. 80 of the Local Government Act.

The law officers further consider that the committee of visitors, appointed by the county council, can appoint and superannuate officers,[1] as all the powers of the old committee of visitors are transferred to the new committee, and that the accounts of the committee of visitors must be kept distinct from the accounts of the county council.

s. 169 of Act of 1890, *ante.*

ORDER OF LOCAL GOVERNMENT BOARD AS TO ABSTRACTS OF ACCOUNTS OF CLERKS OF COUNTY LUNATIC ASYLUMS.

Local Government Act 1888.

Abstracts of Accounts of Clerks of County Lunatic Asylums.

Article I.—The abstract of accounts required to be made in pursuance of sec. 58 of the Lunatic Asylums Act 1853, as modified by the Local Government Act 1888, by the clerk of a pauper lunatic asylum provided in whole or in part at the cost

[1] Cp. now Poor Law Officers' Superannuation Act 1896.

of a county, shall be sent by such clerk to the several persons to whom such abstract is for the time being required to be sent before the thirtieth day of September in each year.

ARTICLE II.—The abstract to be made and sent by the clerk of any such asylum in the year one thousand eight hundred and ninety shall be made out for the period extending from the first day of January, one thousand eight hundred and eighty-nine, to the thirty-first day of March, one thousand eight hundred and ninety, both days inclusive.

Given under the seal of office of the Local Government Board, this eighteenth day of July, in the year one thousand eight hundred and eighty-nine.[1]

L.S.

CHAS. J. RITCHIE,
President.

HUGH OWEN,
Secretary.

MEMORANDUM OF COMMISSIONERS AS TO EPILEPTIC AND SUICIDAL PATIENTS.

s. 322 of Act of 1890, *ante.*

31st May 1886.

MEMORANDUM.

EPILEPTIC AND SUICIDAL PATIENTS.

The day attendant ought to satisfy himself, on taking over the charge, that all the patients on the list are in the ward, and are alive. In most asylums probably this is regularly done; but where this is not so, the Commissioners think that a regulation to this effect should without delay be made.

This precaution should be supplemented by some provision for maintaining continuous supervision over each patient in the special dormitories until he is out of bed, and is under the observation of the day attendants and of his fellow patients.

If the night attendant should be required to wait until all the patients have risen, care must be taken that by imposing this additional duty on him his hours of attendance should not be unduly prolonged.

The above remarks apply almost equally to patients of suicidal propensity, whom it is especially necessary to watch at an hour when the attention of the day attendant is peculiarly liable to be distracted, and opportunities therefore arise for leaving the dormitory unobserved.

LETTER OF COMMISSIONERS AS TO NOTICES OF DISMISSAL.

Rule 25, Rules of Commissioners in Lunacy 1895, *ante.*

26th February 1896.

Rule 25 (Commissioners' Rules, June 1895) applies not only to attendants and others who have been permanently employed, but also to probationers, whose discharge for misconduct would equally require to be notified.

LETTER OF COMMISSIONERS AS TO STATEMENT AND NOTICE OF DEATH.

Rule 27, Form 21, of Rules of Commissioners in Lunacy 1895.

October 1895.

RULES OF THE COMMISSIONERS IN LUNACY DATED JUNE 26, 1895, RULE 27, FORM 21.

"To all the above statements *which are sent to the Registrar of Deaths*, there should be added after the words "if so applied," and before the signature, the words, "I hereby certify that the particulars contained in the above statement are true."

[1] And see p. 1066, *post.*

C

FORMS

FORM OF ISSUE as to validity of deed (see *ante* p. 13), Seton, 5th ed., p. 332, and *Evans* v. *Blood*, 1746, 3 Bro. P.C. 632.

See *ante* p. 28, note 6.

ORDER APPOINTING GUARDIAN *AD LITEM*.

(*Hancock* v. *Peaty*, 1867, 1 P. & D., at p. 335.)

H— (falsely called *P*—) v. *P*—.

"On reading the affidavit of T. F. H—, sworn on the 27th day of July 1866, and the joint affidavit of T. E— and H. N—, sworn on the 26th day of July 1866, whereby it appeared that M. A. F. C. H—, otherwise P—, is now a lunatic, or a person of unsound mind, and therefore by law incapable of acting in her own name, and that the said T. F. H— is her natural and lawful brother and one of her next of kin, and that he is ready and willing to accept of the curation or guardianship of the said lunatic, for the purpose of instituting against R. A. P— a suit for nullity of marriage, by reason of the said M. A. F. C. H— being at the time when the said marriage was solemnised of unsound mind and incapable of forming such a contract, the undersigned registrar of the principal registry" (of the Probate Division of the High Court of Justice) "assigned the said T. F. H— guardian of the lunatic for the purposes aforesaid."

FORM OF ORDER dispensing with concurrence of husband, see *ante* p. 30, and cp. *ex parte Duffill*, 1843, 6 Scott N.R. 30; *re Woodall*, 1846, 3 C.B. 639; *Goodchild* v. *Dougal*, 1876, 3 Ch.D. 650.

s. 10, subs. (1) of Act of 1890.

FORM OF APPOINTMENT OF JUSTICES UNDER SEC. 10, SUBS. (1) OF ACT OF 1890.

We, the undersigned justices of the peace for the (county or quarter session borough) of , do hereby,[1] in pursuance of sec. 10 of the Lunacy Act 1890, appoint to exercise the powers conferred by that statute and by the Lunacy Act 1891 upon the judicial authority.

s. 12 of Act of 1890, *ante*.

Reception after inquisition.—"I authorise you to receive," etc.

s. 13, subs. (1) of Act of 1890, *ante*.

INFORMATION ON OATH UNDER SEC. 13, SUBS. (1) OF LUNACY ACT 1890.

Set out (1) whether information laid by constable, relieving officer, or overseer, (2) special appointment of justice, and (3) substance of subsection.[2]

s. 90 of Act of 1890.

AFFIDAVIT OF PHYSICIAN IN SUPPORT OF A PETITION FOR AN INQUISITION.

IN LUNACY.

In the matter of A.B. Esquire, an alleged lunatic.

I, C.D., bachelor (or doctor) of medicine of , residing at (*true place of abode*), make oath and say—

1. That by the desire of E.F. I visited the said A.B. at on Tuesday the day of 18 for the purpose of ascertaining whether he was or was not of sound mind.

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[1] As to when appointments are to be made, and as to their duration, see sec. 10, subs. (2), *ante*, and notes thereto.

[2] This and other similar forms may be obtained from Shaw and Sons, Fetter Lane, London, E.C.

2. That after careful personal examination and inquiry[1] I am fully satisfied that the mind of the said A.B. is unsound, and that by reason of such unsoundness the said A.B. is incompetent to the management of himself and his affairs.

3. That the unsoundness of mind of the said A.B. was manifested, among other things, by great defectiveness of memory and intelligence, rendering him almost incapable of discourse and quite unable to direct and confine his attention to any subject, by the frequent utterance of indistinct and unintelligible sounds, by his addressing himself with a variety of gestures to two little china ducks on the mantelpiece, and by a persistent belief that spirits were endeavouring to poison his food.

4. That I was informed, and verily believe, that on the month of last the said A.B. endeavoured to destroy himself by attempting to cut his throat with a razor.[1]

Sworn, etc.,

C.D.

ORDER FOR INQUISITION (WITHOUT A JURY).

s. 90 of Act of 1890.

£1 stamp.
£1 stamp.

FRIDAY, the 5th day of JUNE 1896.

In the matter of J.C., widow, a person alleged to be of unsound mind.

WHEREAS A.M.B., wife of H.E.B., and a sister of the above-named J.C., preferred her petition in this matter, stating as therein is stated, and praying that the Masters in Lunacy might be directed to inquire concerning the alleged lunacy of the said J.C. Now, upon reading the said petition and the following affidavits, viz. of sworn and of sworn and of sworn of the due service of notice of the presentation of the said petition on the said J.C. on the day of 1896, I do order that James Redfoord Bulwer, Esquire, Q.C., and Francis William Maclean, Esquire, Q.C., the Masters in Lunacy, or one of them, do in pursuance of the General Commission under the Great Seal of Great Britain to them for that purpose directed, inquire concerning the alleged lunacy of the said J.C., who is now residing at situate at in the county of London.

And I do order that the said inquiry be held at the place of abode of the said J.C., or as near thereto as conveniently may be.

A. L. SMITH.

Pursuant to Her Majesty's General Commission and this order, I have made the inquiry hereby directed, as appears by the inquisition hereunto annexed.
J. R. BULWER.

ORDER FOR INQUISITION (WITH A JURY).

s. 90 of Act of 1890.

In the matter of J.G.H., a person alleged to be of unsound mind.

WHEREAS (*down to end of statement of affidavits same, mutatis mutandis, as in preceding form*), and a notice signed by the said J.G.H. and filed the day of 1896 in the office of the Masters in Lunacy, demanding that in the event of an inquiry being ordered as to whether or not the said J.G.H. is of unsound mind and incapable of managing himself and his affairs, the same should be had before a jury.

I do order that James Redfoord Bulwer, Esquire, Q.C., and Francis William Maclean, Esquire, Q.C., or one of them, do in pursuance of the General Commission under the Great Seal of Great Britain to them for that purpose directed, inquire by the oath of good and lawful men concerning the alleged lunacy, etc. (*same, mutatis mutandis, as in preceding form*).

JOHN RIGBY, L.J.

Pursuant, etc. (*same as in preceding form*).

PRECEPT TO SHERIFF FOR A JURY.

s. 90 of Act of 1890.

By virtue of Her Majesty's General Commission under the Great Seal of Great Britain, bearing date at Westminster the day of one thousand eight hundred and ninety , directed to Esquire, Q.C., and Esquire, Q.C., the Commissioners therein named, and an order of the Right Honourable the Lord Justice made on the day of one thousand eight hundred and , to inquire concerning the alleged lunacy of

[1] Foreign affidavits should be either filed or made exhibits (*ex parte* Hewitson, 1852, 1 W.R. 58).

These are therefore to will and require you to cause to come and appear before the said Commissioners, or one of them, twenty-four[1] good and lawful men of your on the day of 189 , at o'clock in the noon of that day precisely at , and then and there upon their oath to inquire concerning the alleged lunacy of the said , and of all such matters and things as shall be given them in charge by virtue of the said Commission, and hereof fail not at your peril.

Given under the hand and seal of me , one of the said Commissioners, this day of one thousand eight hundred and ninety

To the Sheriff of the
or his Deputy.

s. 90 of Act of 1890, *ante*.

PRECEPT FOR INQUISITION (WITHOUT A JURY).

In the matter of a supposed lunatic.

By virtue . . . alleged lunacy of (*as in preceding form*).

I, one of the said Commissioners, do hereby appoint to proceed on such enquiry at o'clock in the noon precisely of the day of at

Given under my hand and seal this day of one thousand eight hundred and

To
the Solicitor for the Petitioner in the above matter.

s. 90 of Act of 1890, see *ante*.

CAVEAT.

In the matter of Isaac Galpine.[2]

Caveat against any further proceedings in this matter without notice to Mr. Thomas Lowton of the Temple, on behalf of the sisters of the lunatic, 31st August 1808.

s. 90 of Act of 1890.

SUMMONS TO PRODUCE ALLEGED LUNATIC.

L.S.

By virtue of Her Majesty's General Commission under the Great Seal of Great Britain, bearing date at Westminster the day of in the year of the reign of our Sovereign Lady Queen Victoria, directed to the Commissioners therein named, and an order of made to inquire whether of in the county of be a lunatic or not. These are to will and require you to produce before the said Commissioners, or one of them, the said at the execution of the said inquiry at the house (*see Form of Precept to Sheriff, ante*), there to be examined touching the matters aforesaid, and you are to give (*him*) notice accordingly, as also to any other person or persons who are guardians of (*him*) or trustees of (*his*) estate that they may appear in (*his*) defence if they shall think fit.

Given under the hand and seal of me Esquire, one of the said Commissioners, this day of 18 .

To or such other person or
persons as now have the said L.S.
in their custody or power.

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[1] In practice this number is altered to thirty-four, so as to obviate any difficulties as to short attendance. As to the number and composition of the jury, see *ante* p. 300.

[2] When, after the Lunacy Regulation Act 1862 (25 & 26 Vict. c. 86), applications for an inquisition came to be heard in private, and notice was given to all parties interested, caveats fell into comparative desuetude. Where one is lodged now, the Lord Justice dealing with the application for an inquisition would probably either order the parties to attend in his private room or adjourn the application into Court, at the peril of the party lodging the caveat as to costs.

ORDER TO BRING BACK ALLEGED LUNATIC INTO THE JURISDICTION.

s. 92 of Act of 1890, *ante* p. 283.

(*re Wykeham*, 1823, Turn. & Russ., at p. 538.)

I do think fit, and hereby order, that it be referred to the sitting Master . . . to appoint a proper person at the expense of the said E.W.'s estate to repair to the place where the said E.W. now is, and in case such person shall be satisfied, upon such deliberate inquiry as he may think proper to make, that the said E.W. may be brought to England without danger or injury to her health, I do hereby further order that the said E.W. be delivered by J.H. and E., his wife, to the person so to be appointed in order to her being brought to England, unless the said J.H. and E., his wife, do, upon the request of such person, forthwith bring the said E.W. to England; and in case, after service of my order on J.H. and E., his wife, the same shall not be complied with, I do hereby further order that notice of such non-compliance be communicated to the said Master by the person so to be appointed as aforesaid; and in case he shall be of opinion that the said E.W. cannot safely be brought to England, let due notice thereof be also communicated to the said Master. And see *re Anon.*, 1881, 18 Ch.D. 27 and 28.

SUMMONS TO WITNESS.

s. 92 of Act of 1890, *ante* p. 285.

By virtue (*down to*) be a lunatic or not (*see Summons to Produce Lunatic, ante*).

These are to will and require you that you personally be and appear before the said Commissioners, or one of them, on, etc. (*see preceding form*), then and there upon your oath to testify the truth according to your knowledge touching the lunacy of the said and all such matters as shall be demanded of you by virtue of the said commission and order. Hereof fail not at your peril.

Given under the hand and seal of me, Esquire, one of the said Commissioners, this day of one thousand eight hundred and

To, etc. L.S.

OATH OF FOREMAN OF JURY.

s. 92 of Act of 1890, *ante* p. 286.

You shall well and truly inquire of the lunacy of A.B. by virtue of Her Majesty's Commission and the order just read, and of all such other matters and things as shall be given you in charge by virtue of such Commission, and a true verdict give according to the evidence.

So help you God.

OATH OF REMAINDER OF JURY.

The same oath your foreman hath taken on his part you and each of you shall well and truly observe and keep on your respective parts.

So help you God.

OATH OF WITNESS.

The evidence you shall give to the Court and jury sworn touching this inquiry shall be the truth, the whole truth, and nothing but the truth.

So help you God.

OATH OF INTERPRETER.

You shall well and truly interpret to the witness all such questions as shall be demanded of (*him or her*) by virtue of this commission and (*his or her*) answer thereto.

So help you God.

AFFIRMATION OF QUAKER JUROR OR JUROR HAVING NO RELIGIOUS BELIEF.[1]

I, C.D., do solemnly, sincerely, and truly affirm and declare that I will well and truly inquire of the lunacy of A.B. by virtue of Her Majesty's Commission and order just read, and of all such other matters and things as shall be given me in charge by virtue thereof, and a true verdict give according to the evidence.

[1] Cp. Oaths Act 1888 (52 Vict. c. 10).

AFFIRMATION OF QUAKER WITNESS OR WITNESS HAVING NO RELIGIOUS BELIEF.

I, C.D., do solemnly, sincerely, and truly affirm and declare that the evidence I shall give the Court and jury touching this inquiry shall be the truth, the whole truth, and nothing but the truth.

s. 92 of Act of 1890, *ante* p. 288.

FORM OF INQUISITION (WITHOUT A JURY).

Filed th 1896.

County of London to wit.—An inquisition taken at the , situate at in the county of London, this th day of in the sixtieth year of the reign of our Sovereign Lady Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, one thousand eight hundred and ninety-six, by James Redfoord Bulwer, Esquire, Q.C., one of the Commissioners of our said Lady the Queen, by virtue of Her Majesty's General Commission under the Great Seal of Great Britain, bearing date at Westminster the th day of one thousand eight hundred and ninety-one, to James Redfoord Bulwer, Esquire, Q.C., and Francis William Maclean, Esquire, Q.C., the Masters in Lunacy, directed, and under an order of the Right Honourable the Lord Justice Smith made on the th day of one thousand eight hundred and ninety-six, which order is to this inquisition annexed, to inquire concerning the alleged lunacy of J.C.,[1] residing at aforesaid. He, the said James Redfoord Bulwer, having personally examined the said J.C. and taken evidence and called for information to ascertain whether or not the said J.C. is of unsound mind, so that she is not sufficient for the government of herself, her manors, messuages, lands, tenements, goods, and chattels, and the said James Redfoord Bulwer certifies the same accordingly.

In testimony whereof the said James Redfoord Bulwer has to this first above-written inquisition set his name and seal, the day and year.

J. R. Bulwer. ◯ Seal.

s. 92 of Act of 1890, *ante* p. 288.

FORM OF INQUISITION (WITH A JURY).

County of London to wit.—(*down to*) residing at aforesaid (*same, mutatis mutandis, as in preceding form*) upon the oath of (*set out names of jury*), good and lawful men of the said county of London, who, being sworn and charged upon their oath, say that the said J.G.H., at the time of taking this inquisition, is a person of unsound mind, so that he is not sufficient, etc. (*as in preceding form*).

In testimony whereof as well the said Commissioner James Redfoord Bulwer as the jurors aforesaid have to this inquisition set their seals on the day of in the year of our Lord one thousand eight hundred and ninety-six.

J. R. Bulwer. ◯ *Seals of Jurymen.*

s. 94 of Act of 1890.

ORDER FOR INQUIRY BEFORE JUDGE OF THE HIGH COURT

(Cp. sec. 94 of the Act of 1890.)

(Adapt for order as to new trial, p. 316.)

(*re Scott*, 1884, 27 Ch.D., at p. 116.)

Now I do order that all future proceedings under the said order of 4th Feb. 18 , so far as it directs the inquiry to be held by one of the Masters in Lunacy, be stayed, and I do order that the inquiry concerning the alleged lunacy of the said G. G. Scott shall be had and made before a good jury; and do, pursuant to the provisions of (the Lunacy Act 1890) order and direct that such inquiry be made under an issue to be tried in Her Majesty's High Court of Justice, in the Queen's Bench Division of the said Court, and that the question in such issue shall be whether the said G. G. Scott is a person of unsound mind and incapable of managing himself or his affairs.

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[1] Slip in Christian name immaterial (*re Crawford*, 1836, 1 My. & Cr. 240).

FORM OF ORDER FOR ATTENDANCE OF ALLEGED LUNATIC FOR EXAMINATION UNDER SEC. 26, SUBS. (1) OF THE LUNACY ACT 1891.

s. 26, subs. (1), Lunacy Act 1891, *ante* p. 294.

(*re B.*, 1892, 1 Ch., at p. 460.)

I do order that pursuant to sec. 26, subs. (2) of the Lunacy Act 1891, the above named C.E.B. do attend at the room, etc., at the hour of two o'clock in the afternoon of Thursday the 12th day of November 1891 for examination by Dr. H. M.

ORDER FOR WRIT OF ATTACHMENT UNDER SEC. 26, SUBS. (2) OF THE LUNACY ACT 1891.

s. 26, subs. (2), Lunacy Act 1891, *ante* p. 295.

(*re B.*, 1892, 1 Ch., at p. 464.)

The writ of attachment against the respondent will issue but will lie in the office for a fortnight from this day if she is in England, and if she is abroad for a fortnight after she shall return within the jurisdiction. The respondent to have leave to apply at any time to one of the Judges of this Court; the respondent to pay the costs of this application, but execution to enforce the costs to be stayed till the conclusion of this inquiry.

ORDER FOR COSTS OUT OF ALLEGED LUNATIC'S ESTATE.

s. 100 of Act of 1890, *ante*.

(*re* C., 1874, L.R. 10 Ch., at p. 76.)

Inquiry based upon report of Commissioners.

Let the costs, charges, and expenses incurred by the official solicitor of and incidental to the report of the Commissioners in Lunacy, dated the 23rd May 1874, as to the unsoundness of mind of the said C., and of the order of the 11th of July 1874 for inquiry concerning his lunacy, and of and incidental to the prosecution of the said inquiry and this application, be paid by the said C. out of his estate, and let such costs be taxed, etc.

PETITION OF LUNATIC SO FOUND FOR LIBERTY TO TRAVERSE INQUISITION.

s. 101 of Act of 1890.

(Adapted from *re Chapman*, alias *Dunn*, 1st August 1829.)

In the matter of A.B., a person found lunatic by inquisition.

To the Right Honourable

The humble petition of the said A.B. showeth—

1. That by an order made in this matter on the day of 18 by it was ordered that an inquisition should be held to inquire of the lunacy of your petitioner.

2. That by the inquisition held in pursuance of the said order on the day of 18 it was found that your petitioner was a person of unsound mind.

3. That your petitioner is advised that the finding aforesaid was contrary to the evidence adduced on the part of your petitioner;

or

That your petitioner is greatly aggrieved and prejudiced by the said order and the return of the said inquisition, and that your petitioner is of sound mind and perfectly competent and sufficient for the government of himself and his property.

Your petitioner therefore most humbly prays your Lordship that he may be at liberty to traverse the aforesaid inquisition, or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem just.

And your petitioner will ever pray.

Dated

s. 101 of Act of 1890.

PETITION BY HUSBAND OF LUNATIC FOR LIBERTY TO TRAVERSE.

In the matter of R.B., otherwise R.N., a person found lunatic by inquisition.

To the Right Honourable

The humble petition of R.N., the husband of the said R.B., showeth—

1. That by an order made in this matter on the day of 18 by it was ordered that an inquisition should be held to inquire of the lunacy of the said R.B.

2. That by the inquisition held in pursuance of the said order, the said R.B. was found to be a person of unsound mind.

3. (*See paragraph* 3 *in preceding form.*)

Your petitioner therefore prays your Lordship that he may be at liberty to traverse the said inquisition, or that your Lordship will be pleased to make such further or other order herein as to your Lordship may seem meet.

And your petitioner

Dated

s. 101 of Act of 1890.

ORDER ON PETITION.

7th December 18 .—Let all parties concerned attend me in the matter of this petition on the , hereof give notice forthwith; and a caveat having been entered by C.D., let notice hereof be forthwith given to the said C.D.

s. 101 of Act of 1890, *ante*.

AFFIDAVIT OF PHYSICIAN IN SUPPORT OF PETITION FOR LEAVE TO TRAVERSE.

(*See Rules in Lunacy* 1892, rr. 85-92, *ante, as to requisites of affidavits.*)

In Lunacy.

In the matter of A.B., a person found to be of unsound mind.

I, J.H., bachelor (or doctor) of medicine of , residing at (*true place of abode*) make oath and say—

1. I have been in practice as a physician for years last past and (*state special experience as regards insanity*).

2. I visited, and carefully examined, the said A.B. on the days of 18 at for the purpose of ascertaining whether the said A.B. was of sound or unsound mind.

3. I found the state of the said A.B. to be as follows:

4. From the investigations so made by me upon the above-mentioned days, I am fully satisfied that the said A.B. is of sound mind and understanding and competent to the management of his person and property.

Sworn, etc. J.H.

s. 101 of Act of 1890, *ante*.

ORDER GIVING LIBERTY TO TRAVERSE.[1]

(Cp. *re Cumming*, 1852, 1 De G. M. & G., at p. 559.)

In Lunacy.

In the matter of C.C., a person found to be of unsound mind.

Whereas the above-named C.C. did on the day of last prefer her petition in the said matter, stating, as therein is stated, and praying, etc. Whereupon all parties concerned were ordered to attend on the matter of the said petition on the day of , whereof notice was given forthwith, and a caveat having been entered against any proceedings in this matter without notice to J.T., solicitor for T.C.H. and C.E.J., the children and only next of kin of the said C.C., notice of the said petition was directed to be given to the said J.T., and the said petition having come on to be heard before the Lords Justices on the

[1] Adapt for order as to security.

day of last. . . . Now, upon hearing the said petition read, and upon hearing counsel for the petitioner and for the said , and the said C.C. having, in pursuance of the Lord Chancellor's order in this behalf, personally attended him and been examined by him as to her wish to traverse the said inquisition, and having expressed her wish so to do, and it appearing to him upon such examination that the said C.C. was mentally competent to form and express such wish as aforesaid, we do think fit to and do hereby declare that under the circumstances aforesaid the said C.C. is entitled as of right to traverse the aforesaid inquisition, and we do hereby order that she be at liberty to traverse the same accordingly; and we do hereby further order that the traverse be tried before a special jury of the county of Middlesex within six calendar months from the date of this order, and be returned within one month after trial; and we do hereby further order that in case any taxation of costs in this matter shall be hereafter ordered, not more than two counsel on each side be allowed for on the hearing of this petition; . . . and we do hereby further order that so much of the said petition as prays for stay of proceedings in this matter do stand over.

PLEADINGS IN A TRAVERSE OF AN INQUISITION.

s. 101 of Act of 1890, *ante*.

In the Petty Bag Office.[1] In Chancery.

Michaelmas term Vict.

Middlesex to wit.—By a certain inquisition, taken at the house of , situated in the county of , the day of , the th year of the reign of our Lady Victoria, etc., in the year of our Lord 18 , before Esquire, Q.C., Commissioner in Her Majesty's General Commission under the Great Seal of Great Britain, bearing date at Westminster the day of then last past, to him the said Commissioner and other in the said commission named, and by an order of the Right Honourable the Lord Justice made the day of 18 , directed to inquire (amongst other things) of the lunacy of (*the alleged lunatic*) of Esquire, on the oaths of (*names of jurors*), good and lawful men of the said county. It was found that the said was at the time of taking the said inquisition a person of unsound mind, so that he was not sufficient (*the words of the verdict, see Form of Inquisition, ante*) as by the said inquisition, together with the said commission thereunto annexed, returned into the Chancery of our said Lady the Queen at and there now remaining filed amongst the records of the said Court, may more fully appear.

And now at this day, that is to say, on the day of November in this same term before our said Lady the Queen in her Chancery at in the said county of Middlesex, cometh the said , by C.D. his attorney, and prays oyer of the said order the return thereof and the inquisition thereupon taken, and the same being read and heard, the said complains that by colour of the premises he is greatly vexed and disturbed, and that unjustly, because, protesting that the said order and the return thereof and inquisition thereupon taken are insufficient in law and unto which he need not, neither is he bound by the law of the land, to answer: For plea, nevertheless, in this behalf, the said saith that he the said at the time of taking the said inquisition, and always before, was, and from thence hitherto hath been, and now is, of sound mind and understanding and sufficient for the government of himself, his manors, messuages, lands, tenements, goods and chattels: Without this that he the said , at the time of taking the said inquisition, or at any time before or after was, or now is, a person of unsound mind, and not sufficient for, etc., in manner and form as by the said inquisition is above found: and this the said is ready to verify: whereupon he prays judgment, and that the said order return, and inquisition thereupon taken may be vacated and discharged, and that the hands of our said Lady the Queen may be amoved, and that the said may be restored to the government of himself, and to the possession, etc., and that he, under colour of the said inquisition, may be no further molested, but from the premises may be wholly discharged by this Court, and so forth.

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[1] There has been no traverse since the Petty Bag Office was abolished. This form will probably, however, be followed.

REPLICATION OF THE ATTORNEY-GENERAL.

In the Petty Bag Office. In Chancery.

Michaelmas term, in the year of the reign of Queen Victoria.

The Queen against (*the lunatic*).

And Attorney-General of our said Lady the Queen, who prosecutes for our said Lady the Queen in this behalf, being present here in Court in his own proper person, for our said Lady the Queen, says that by reason of anything by the said above in pleading alleged, the said order, return, and inquisition thereupon taken ought not to be vacated or discharged, nor the hands of our said Lady the Queen amoved, nor the said lunatic restored to the government of himself or to the possession, etc. Because he says that the said , at the time of taking the said inquisition, and before, was, and now is, of unsound mind, so as not to be sufficient, etc., in manner and form as by the said inquisition above is laid. And this the said Attorney-General, who prosecutes as aforesaid, prays may be inquired of by the country, etc., and the said (*lunatic*) doth the like. Therefore a day is given, as well to the said Attorney-General, who prosecutes in this behalf for our said Lady the Queen as aforesaid, as to the said (*lunatic*), before our said Lady the Queen, wheresoever she shall then be in England, to do and receive what shall be just in the premises. And the sheriff of the county of Middlesex is commanded that he cause to come before our said Lady the Queen at that day twelve good and lawful men of the body of his county, each of whom shall have ten pounds at least of lands, tenements, or rents by the year, by whom the truth of the matter in the premises may be better known and inquired into, and who to the said (*lunatic*) are in no ways related, to recognise upon their oaths the full truth of and concerning the premises aforesaid.

s. 106 of Act of 1890, *ante*.

PETITION FOR SUPERSEDEAS.

In Lunacy.

In the matter of A.B., late a lunatic.

To the Right Honourable

The humble petition of the above-named A.B,[1] presently residing with , showeth—

[*State in separate paragraphs* (1) *making of order for inquisition*, (2) *execution of inquisition and finding*, (3) *Master's report and appointment of committees.*]

4. That the costs, charges, and expenses of and incidental to the making of the order for the said inquisition and the execution thereof, and the costs, charges, and expenses of almost all the proceedings which have been had in this matter have been paid out of your petitioner's estate.

5. That the said (*committees*) have not yet rendered or passed a final account as such committees as aforesaid, and the last account passed by them as such committees is not carried beyond the month of 18 .

6. That there is in the hands of the said (*committees*) a considerable sum arising from the said estate, and more than sufficient to satisfy any costs, charges, or expenses, to the payment of which they, or either of them, are, or is, or may be entitled, and on their rendering or passing a true and final account, and after all such allowances shall have been made to them in respect of costs, charges, and expenses, or otherwise as they, or either of them, are, or is, or may be entitled to as such committees as aforesaid, a balance will appear to be, and be found, due from them.

7. That your petitioner has been perfectly restored to his sound state of mind and understanding for the space of twelve calendar months now last past and upwards, and is desirous that the said commission should be now superseded.

Your petitioner therefore humbly prays your Lordship that he may be at liberty to attend in open court for the purpose of being examined as to his soundness of mind and competency of understanding for ordering and managing his person and estate. And that the said inquisition and all proceedings thereunder may be forthwith superseded and determined, and

[1] The petition should always be in the name of the lunatic, *ex parte Stanley*, 1750, 2 Ves. sen. 25.

that a supersedeas for that purpose may issue, and that it may be referred to . . . to tax all parties the costs, charges, and expenses of and incidental to this application, and that the same, when so taxed, may be paid out of. And that upon payment thereof the recognisance entered into by the said (*committee of the estate*) and his sureties may be delivered up to be vacated and cancelled, or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem fit.
And your petitioner will ever pray.

A.B.

Signed by the said A.B., the petitioner,
in the presence of E.F., his solicitor in
the matter of the petition.

Answer.

8th August 18 .—Let all parties concerned attend me on the matter of this petition on the , hereof give notice forthwith.

AFFIDAVIT OF WIFE IN SUPPORT OF PETITION FOR SUPERSEDEAS BY HUSBAND.

s. 106 of Act of 1890, *ante.*

IN LUNACY.

In the matter of E.F., late a lunatic.

I, C.F. of (*true place of abode*) wife of the above-mentioned E.F., make oath and say—

1. That on the day of 18 an order for an inquisition was, on my petition, issued to inquire of the said E.F., who was thereupon, on inquisition taken, found and declared to be a lunatic.

2. The said E.F. was, at the time of the said inquisition being taken, confined in .

3. In the month of 18 the said E.F. recovered his senses and became of sound mind.

4. I believe the said E.F. to be now perfectly recovered and fully capable of managing himself and his affairs.

Sworn, etc. C.F.

For AFFIDAVIT OF PHYSICIAN, etc., *adapt Affidavit in support of Petition for Inquisition.*

ORDER FOR SUPERSEDEAS.

s. 106 of Act of 1890, *ante.*

IN LUNACY.

In the matter of A.B., late a person of unsound mind.

WHEREAS (*recite fact and prayer of petition, counsel appearing for parties, and committees of person and estate*). Now, upon reading the said petition, and also the several affidavits filed in support of this application, and the said A.B. having this day attended and been personally examined by me, and appearing to be in a sound state of mind and understanding, I do think fit, and hereby order the order for an inquisition which issued in the matter of the said A.B., and the inquisition taken thereon, and all proceedings under the said inquisition, or relating thereto, be forthwith superseded and determined. And I do think fit, and hereby further order, that it be referred to to tax the reasonable and proper costs, charges, and expenses, etc. (*and so on, following the prayer of the petition, ante* p. 1037).

WRIT OF SUPERSEDEAS (BEFORE ANY GRANT TO COMMITTEES).

s. 106 of Act of 1890, *ante.*

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to all to whom these our present letters shall come, greeting: Whereas, by a certain inquisition taken at on by virtue of in that behalf, duly made and issued to inquire (amongst other things) of the lunacy of A.B. of . It was found (amongst other things) that the said A.B. was at the time of taking the said inquisition a lunatic, so that she was not sufficient for the government of herself and her estate, as by the

same inquisition (amongst other things) remaining on record may more fully appear; but, upon full examination in our Court of Chancery before us had in this behalf, it sufficiently appears to us that the said A.B. is recovered of her lunacy aforesaid, and is of sound mind, memory, and understanding, so that she is sufficient for the government of herself and her estate; and we, in this behalf, being willing that what is just and right be done to the said A.B.: Know ye therefore that we, for and in consideration that the said A.B. now is not a lunatic, but of sound mind, sane memory, and understanding, and for divers other good causes and considerations us in this behalf especially moving, have superseded and determined, and by these presents do supersede and determine, the aforesaid commission . . . and the aforesaid inquisition and all other proceedings thereupon had and made, and all and singular the same, to all intents and purposes whatsoever, we annul, make void, and fully discharge by these presents.—In testimony whereof we have caused these our letters to be made patent. Witness ourself at Westminster the day of in the year of our reign.

s. 106 of Act of 1890, *ante*.

WRIT OF SUPERSEDEAS (AFTER THE GRANT TO COMMITTEE).

Victoria (*down to*) may more fully appear (*see preceding form*), for the tuition of whom and the management of his estate it belongs to us to provide. And whereas by our letters patent, bearing date the day of in the year of our reign, we did give, commit, and grant unto C.D. of the custody of the person, tuition, regulation, and government of the said A.B. To have and to hold the aforesaid custody of the person, tuition, regulation, and government of the said A.B. from the date thereof so long as it should please us during the lunacy of the said A.B. And whereas by our same letters patent we did give, commit, and grant unto the said C.D. the custody, regulation, occupation, disposition, and receipt, as well as of all manors, messuages, lands, tenements, houses, farms, revenues, services, and hereditaments, with the appurtenances, and of all rents, revenues, and profits thereof which the aforesaid A.B. had, or ought to have, in possession or reversion, as also the custody and government of all the goods and chattels, farms, stock of cattle, wealth, plate, debts, money, jewels, traffic, merchandises, and other commodities and profits whatsoever to the said A.B. belonging, or in any manner appertaining, and also the use and negotiation of the same. To have and to hold the aforesaid custody, regulation, occupation, disposition, and receipt of the aforesaid manors, messuages, lands, tenements, houses, farms, goods, and chattels, and the rest of the premises of the said A.B. from the date thereof, so long as it should please us during the lunacy of the said A.B., or to the uses and intents and under the provisoes in the same letters patent contained and specified, as by the same letters patent (amongst other things) remaining on record may more fully appear. But because (*down to*) have revoked, determined, and superseded (*see preceding form*), and by these presents do revoke, determine, and supersede the letters patent aforesaid and the several grants thereby made to the said C.D. as aforesaid, and all and singular in the same letters patent contained and specified, to all intents and purposes whatsoever, and all and singular the same, we annul and make void by these presents; and also the aforesaid C.D. from the custody, regulation, occupation, disposition, and receipt of the aforesaid manors, messuages, lands, tenements, houses, farms, goods, and chattels of the said A.B., and all and singular other the premises, we fully discharge by these presents, requiring that the aforesaid C.D. shall by no means suffer any person or persons to intermeddle touching the said A.B. or his estate for the future. And the said A.B. to the regimen and government of himself and all his are fully restored by these presents.—In testimony whereof (*see preceding form*).

s. 107 of Act of 1860.

EXEMPLIFICATION OF INQUISITION FROM ENGLAND TO IRELAND.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to our Chancellor of that part of our said United Kingdom called Ireland, greeting: We send to you enclosed in these presents the transcript of a certain inquisition taken at in the county of the day of in the year of our reign and in the year of our Lord one thousand eight hundred and by Esquire, one of our Commissioners by virtue of our General Commission under the Great Seal of Great Britain, bearing date at Westminster the day of 18 , to Esquires, the Masters in Lunacy, directed

and under an order of the Right Honourable the Lord Justice made on the day of 18 , and which order is to the said inquisition annexed, to inquire concerning the alleged lunacy of residing at in the county of , together with the said order and the return thereon, and now in our Supreme Court of Judicature at the Royal Courts of Justice, London, remaining of record, commanding you that having inspected the transcript aforesaid you should cause to be further done thereon that which of right and according to the law and custom of our said United Kingdom you shall see fit to be done.—Witness ourself at Westminster the day of in the year of our reign.

Then follow—
Copy of order of the Lord Justice, and return thereon.
Copy of inquisition, and then the following certificate is added at the foot :—

Examined with the original record in the Crown Office department of the Central Office of the Supreme Court this day of 18 .
(Signature of Chief Clerk).

EXEMPLIFICATION OF IRISH INQUISITION.

s. 107 of Act of 1890.

'Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, and so forth, to all to whom these presents shall come, greeting: We have inspected certain orders of our Lord Chancellor of that part of our said United Kingdom called Ireland (entrusted by virtue of our sign manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind), in the words following :—

In Lunacy (*set out the orders*).

And we have further inspected an order of our said Chancellor entrusted as aforesaid, bearing date the day of 1896, whereby amongst other things it was ordered that S. G., as committee of the lunatic's estate, should proceed to have the declaration in lunacy exemplified. We accordingly have exemplified the said orders by these presents, and in testimony whereof have caused those our letters to be made patent.—Witness our Justices General and General Governors of Ireland at Dublin this day of 1896, in the fifty-ninth year of our reign.

I certify the foregoing to the Right Honourable Lord High Chancellor of Great Britain.

Ashbourne, *C.*

Examined by me,
J. M. Colles,
Registrar in Lunacy.

(*Impression of the Great Seal accompanies.*)

ORDER FOR TRANSMISSION OF RECORD OF WRIT OF SUPERSEDEAS TO IRELAND.

s. 107 of Act of 1890, *ante*.

In Lunacy.

In the matter of A.C.T., late a person of unsound mind.

Whereas, etc. Now, etc. We do order that the proper officer for that purpose do forthwith transmit a transcript of the record of the writ of supersedeas of the lunacy of the said A.C.T. to the Registrar in Lunacy in Ireland, to be entered as of record there for the purposes of the Lunacy Act 1890.

FORM OF FIRST SUMMONS IN CASES UNDER INQUISITION.

s. 108, subs.(2) of Act of 1890, *ante*.

In Lunacy.

In the matter of A.B., a person of unsound mind.

Let all persons, etc., on the part of C.D. the petitioner for the order for inquiry in this matter.

1. That E.F. may be appointed committee of person.
2. That G.H. may be appointed committee of estate.

3. That £ per annum may be allowed for the maintenance of the said A.B. from 189 .

4. That £ due for the past maintenance of the said A.B. to such last-mentioned date may be paid out of

5. That the costs of the said applicant and next of kin attending may be taxed and paid out of

s. 108, subs.(2) of Act of 1890, *ante* p. 346.

UNDERTAKING BY JOINT COMMITTEES TO VISIT LUNATIC.

Same as ordinary undertaking, but with following modification :—
and we hereby undertake that we or one of us will visit the said

s. 108, subs.(2) of Act of 1890, *ante* p. 346.

LETTER AND INSTRUCTIONS TO SOLICITORS.[1]

Lord Chancellor's Visitors' Office,
Royal Courts of Justice,
Strand, London, W.C.,
189 .

The Board of Visitors of Lunatics direct me to apply to you, as the solicitor in the matter of M a lunatic, for the information specified in the enclosed form, to enable them to execute their duties, pursuant to the Lunacy Act.

The Board further request that if, at any time prior to the appointment of committees, either a change should be made in the residence of the lunatic, or h death should occur, you will have the goodness to send immediate notice thereof to this office.—I am, Your obedient servant,

O. E. Dickinson,
Secretary.

Solicitor.

s. 108, subs.(2) of Act of 1890, *ante* p. 346.

REMOVAL, CHANGE OF ADDRESS, VISITS TO THE SEA-SIDE, etc., etc.

Memorandum.

The committee of the person, or any person in whose private house, or asylum, a Chancery lunatic resides, is required to send notice to this office, three days previous to any intended change of residence, of the exact address where the patient is to be found. A similar notice three days before the return home is also to be sent if the removal be only a temporary one. Such notices are to be posted, unpaid, addressed, "The Lord Chancellor's Visitors, Royal Courts of Justice, Strand, London, W.C."

By order of the Board,

O. E. Dickinson,
Secretary.

In Re a person of unsound mind
The solicitor in the matter requested to ascertain the following facts accurately, and answer, sign, and return this paper to

The Lord Chancellor's Visitors,
Royal Courts of Justice,
Strand, London, W.C.

---

[1] This letter is sent out to the solicitors immediately the lunatic is so found by inquisition.

If in an asylum, the name and situation of it is a sufficient address.

State the name of the place in which the patient resides, and the county.

If in a town, the name of the street and number of the house.

And the name of the occupier of the house.

If not in a town, the nearest town.

The distance from it to the patient's house.

The name of the road or railway station on or near which the residence is.

The nearest public building, hotel, or other good landmark.

State also, the name and designation of the person having the care of the patient.

His or her address.

The name of the medical attendant.

His address.

Signature of solicitor.

Address.

Date.

NOTICE TO COMMISSIONERS IN LUNACY.[1]

s. 108, subs.(2) of Act of 1890, *ante* p. 346.

LORD CHANCELLOR'S VISITORS' OFFICE,
ROYAL COURTS OF JUSTICE, STRAND,
189 .

SIR,

By direction of the Board of Visitors I have to acquaint you, for the information of the Commissioners in Lunacy, that of was, on the instant, found lunatic by inquisition.—I am, sir, Your obedient servant,

O. E. DICKINSON,
Secretary.

The Secretary,
Commissioners in Lunacy.

MEMORANDUM, LETTER, AND INQUIRIES SENT OUT TO THE COMMITTEE OF THE PERSON ON APPOINTMENT.[2]

s. 108, subs.(2) of Act of 1890, *ante* p. 346.

MEMORANDUM.

REMOVAL, CHANGE OF ADDRESS, VISITS TO THE SEASIDE, ETC., ETC.

The committee of the person, or any person in whose private house, or asylum, a Chancery lunatic resides, is required to send notice to this office, three days previous to any intended change of residence, of the exact address where the patient is to be found. A similar notice three days before the return home is also to be sent if the removal be only a temporary one. Such notices are to be posted, unpaid,

[1] This letter is sent to the Commissioners in the case of every new lunacy.

[2] The letter is called "The Committee's First Letter."

addressed, "The Lord Chancellor's Visitors, Royal Courts of Justice, Strand, London, W.C."

By order of the Board,

O. E. Dickinson,
Secretary.

LETTER.

Lord Chancellor's Visitors' Office,
Royal Courts of Justice,
Strand, London, W.C.,
189 .

The Board of Visitors request that you will have the goodness to fill up the answers to the inquiries in the enclosed paper, and to return it, without delay, to this office.

The Board further request that you will, from time to time, as occasion may arise, send to this office the information particularised below, which is required by the Visitors for the due discharge of their duties.—I am, Your obedient servant,

O. E. Dickinson,
Secretary.

Committee's Half-Yearly Reports.

Reports half-yearly, in January and July in each year, filling up the blank forms which will be sent from this office, every half-year, for the purpose.

Committee's Special Reports.

Immediate notice of any important change in the health or condition, whether mental or bodily, of M to be sent to this office.

Change of Residence.

Immediate notice of any change of residence of M whether permanent or temporary, to be sent to this office, with such particulars as to the new abode as will enable the Visitor to find it without difficulty. Careful attention to this direction is urgently required, as the visits have to be made at short intervals.

Death.

In the event of the death of M immediate notice of this event to be sent.

The committee of M requested to ascertain the following facts accurately, and answer, sign, and return this paper to

The Lord Chancellor's Visitors,
Royal Courts of Justice,
Strand, London, W.C

State the name of the place and county [in which the patient resides, and also whether it is permanent or temporary.

If an asylum, the name and situation of it is a sufficient address.

- If in a town, the name of the street and number of the house.
- And the name of the occupier of the house.
- If not in a town, the nearest town.
- The distance from it to the house of the patient.
- The name of the road or railway station on or near which the residence is.
- The nearest hotel or public building.

State also the name of the person having the care of the patient.

His or her address.

The name of the medical attendant.

His address.

Signature of committee.

Address.

Date.

FORM OF INSTRUCTION, MADE UP INTO BOOKS AND DISTRICTS, SENT TO THE VISITORS EVERY OCTOBER.

s. 108, subs.(2) of Act of 1890, *ante* p. 346.

The Visitors (3) each have what is called a district, *i.e.* the *Home* District, the *North*, and the *West*.

Every patient so found by inquisition is visited twice a year, but the private patients of only two years' standing, from the date of the inquiry, are visited four times a year until the relaxation of this rule is recommended by the Visitor to the Lord Chancellor.

Name.

Residence.

Committee.

Fortune and income.

Maintenance.

INSTRUCTIONS TO, AND FORM OF REPORT BY, COMMITTEES OF THE PERSON.[1]

s. 108, subs.(2) of Act of 1890, *ante* p. 346.

THE LORD CHANCELLOR'S VISITORS' OFFICE,
ROYAL COURTS OF JUSTICE,
STRAND, LONDON, W.C.,
189 .

The Board of Visitors request that you will have the goodness to report upon the condition and treatment of M , filling up the answers to the following inquiries, signing and returning the same to this office.

1.—What is the patient's exact present residence?

2.—*If only on a visit to this place, say so, and for how long?*

3.—What has been the state of the patient's bodily health during the past half-year?

4.—Has any change occurred in the patient's mental state? If so, mention what.

5.—Has any change in the treatment been required? If so, mention what.

6.—Add any other remarks you may have to make.

Date

Signature and *full permanent address of committee.*

Signature of medical attendant.

[1] This form of report is sent out to the committee of the person every June and December.

FORM OF ACCOUNT BY COMMITTEE OF THE PERSON.[1]

LORD CHANCELLOR'S VISITORS' OFFICE,
ROYAL COURTS OF JUSTICE,
STRAND, LONDON, W.C.,
189 .

The sum allowed to you as committee of the person of M for h maintenance as supplied to the Visitors by the Masters in Lunacy, and as ordered, is £ per annum.

I am directed by the Board of Visitors to request that you will be so good as to supply me with a statement of the manner in which this sum has been expended during the year from 1st January to 31st December 189 .—I am, Your obedient servant,

O. E. DICKINSON, *Secretary.*

Committee of the Person.

The Form of Statement to be filled up and returned is given on the other side of this letter. The Form itself must be returned; not a copy of it.

Form of Statement to be returned to the Visitors, to which may be added any other items or remarks by way of further explanation the committee may wish to make.

Sum allowed for the maintenance of M for the year ending 189		Paid for board, residence, washing, &c. . .	
		Medical and other attendance	
		Clothes	
		Visits to seaside . .	
		Carriage exercise, or other recreation . . .	
		Committee's visits, and incidental expenses .	
		Balance in hand (if any) on the year's account, 189	
	£		£

s. 108, subs.(2) of Act of 1890, *ante.*

BOND OF COMMITTEE OF PERSON AND ESTATE.

Know all men by these presents that we

are bound and firmly obliged to our most Serene Lady, Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, in pounds of good and lawful money of Great Britain, to be paid to the same Lady the Queen, her heirs or successors, to which payment well and truly to be made we bind ourselves, and every of us jointly and severally, our heirs, executors, and administrators, and the heirs, executors, and administrators of each of us, firmly by these presents, sealed with our seals, dated the day of in the year of the reign of our said now Lady the Queen, etc., and in the year of our Lord One thousand eight hundred and ninety

The condition of the above-written obligation is such that whereas the custody of the person, and the regulation and government of residing at , a person of unsound mind, and also the custody,

A
In the matter of
a person of unsound mind.
This is the Bond referred to in the Affidavit of sworn before me this day of 189 .

[1] This form of account (together with the preceding form of report) is sent out *only* in December.

regulation, occupation, disposition, and receipt of h estate have been committed and granted to the above bounden the said being unable to govern h self or to manage h estate during the continuance of h unsoundness of mind.

If therefore the said shall yearly, or oftener if he be thereunto required, make a just and true account of all and singular the rents, issues, and profits of the real estate of the said and also of h personal estate, and the profits thereof as now are or hereafter shall come to h hands, custody, or possession, or which he may receive out of or concerning the said estate, and shall carefully observe, perform, and keep the orders and directions of the Lord Chancellor of Great Britain, Lord Keeper, Lords Commissioners for the custody of the Great Seal of Great Britain, or the Lords Justices, or other the person or persons for the time being entrusted by the Queen's sign manual, or her successors, with the care and commitment of the custody of the persons and estates of idiots, lunatics, and persons of unsound mind, or any of them, for the time being made, or hereafter to be made, touching or concerning the said and h estate, and touching all such moneys as shall yearly remain due upon the foot of the account duly taken by one of the Masters in Lunacy, and filed in the office for that purpose appointed, and shall be careful to see the houses, buildings, and structures of the said to be well and sufficiently repaired, and so kept and maintained during the continuance of the said grant, and shall carefully preserve and keep all the deeds, evidences, and writings touching the manors, messuages, lands, tenements, hereditaments, and estates, of the said as now or hereafter shall come to h hands, custody, or possession, and shall carefully provide for the person of the said and for h safety and for h family, if any be or shall be during the continuance of the said grant, and shall in all things demean h sel as careful and faithful grantee or committee of the person and estate of the said that then the said obligation to be void, or else the same to stand, remain, and be in full force and virtue.

Signed, sealed, and delivered by the above-named

in the presence of

The following endorsement is made by the Master on the back of the bond:

I approve of this bond, being the bond referred to in my certificate made in the above matter the day 189 .[1]

INSTRUCTIONS FOR SECURITY OF RECEIVER.

s. 108, subs.(2) of Act of 1890, *ante*.

In Lunacy.

In the matter of , a person of unsound mind, not so found by inquisition.

Instructions for Security of Receiver.

The Receiver is of in the county of

The sureties proposed are of in the county of and of in the county of

The present residence of the lunatic is in the county of

The date of the order (left herewith) appointing the Receiver is the day of 189 .

Dated this day of 189 .

Solicitor for the Receiver.

Penalty, £ .

[1] As to enforcement, see *re Hill*, 1863, 1 De G. J. & S. 487.

s. 108, subs. (2) of Act of 1890, *ante*.

CERTIFICATE OF COMPLETION OF COMMITTEE'S SECURITY.

IN LUNACY.

189 .

In the matter of , a person of unsound mind.

TO THE RIGHT HONOURABLE THE LORD HIGH CHANCELLOR OF GREAT BRITAIN.

WHEREAS, pursuant to an order in this matter dated the day of 189 , the custody, regulation, occupation, disposition, and receipt of the estate of the said have been committed and granted to

Now it is hereby certified under the seal of the Masters in Lunacy as follows :—

1. That the said has, together with

h sureties, entered into a bond, dated the day of 189 in the penal sum of £ duly executed by them, for answering the estate of the said and accounting for the rents, profits, and produce thereof, and for the faithful discharge of h duties as committee of the estate of the said

2. That the said bond of the said and h said sureties has been approved of by the said Masters, and remains deposited in their office, and that the security of the said and the grant to h of the custody of the estate of the said are completed.

s. 108, subs. (2) of Act of 1890, *ante*.

CERTIFICATE OF COMPLETION OF RECEIVER'S SECURITY.

IN LUNACY.

189 .

In the matter of , a person of unsound mind, not so found by inquisition.

TO THE RIGHT HONOURABLE THE LORD HIGH CHANCELLOR OF GREAT BRITAIN.

WHEREAS, pursuant to an order in this matter dated the day of 189

was authorised, upon completing such security as the Masters in Lunacy should approve of, to exercise such of the powers of a committee of the estate of the said as thereby directed.

Now it is hereby certified under the seal of the said Masters as follows :—

1. That the said has, together with

h sureties, entered into a bond, dated the day of 189 in the penal sum of £ duly executed by them, for answering the estate of the said and accounting for the rents, profits, and produce thereof, and for the faithful discharge of h duties as authorised by the said order.

2. That the said bond of the said and h said sureties has been approved of by the said Masters, and remains deposited in their office, and that the security of the said is completed.

s. 108, subs. (2) of Act of 1890, *ante*.

AFFIDAVIT ON COMMITTEE'S ACCOUNT (LUNATIC SO FOUND).

In the matter of , a person of unsound mind.

the committee of the person and estate of the above-named make oath and say that the foregoing account

doth, to the best of knowledge and belief, contain a just and true account of the several sums of money which have been received, retained, and paid by , or by any other person or persons whomsoever, by order or for use on account of the said or h estate, from the day of 18 , to the day of 18 . And that the several sums of money in the said account mentioned to have been retained, paid, and allowed have been really retained, paid, and allowed for the several purposes in the said account mentioned, and that all the matters and things therein stated are true, and that there is no error or omission in the said account, to the best of knowledge and belief. And further say that and sureties are living, and that neither of them has been declared bankrupt, nor compounded with his creditors.

Sworn

AFFIDAVIT ON ACCOUNT OF PERSON APPOINTED TO EXERCISE POWERS OF COMMITTEE (LUNATIC NOT SO FOUND).

s. 108, subs.(2) of Act of 1890, *ante*.

In the matter of , a person of unsound mind, not so found by inquisition.

I, , the person appointed by an order in this matter to exercise certain of the powers of a committee of the estate of the above-named make oath and say that the foregoing account doth, to the best of knowledge and belief, contain a just and true account of the several sums of money which have been received, retained, and paid by , or by any other person or persons whomsoever, by order or for use on account of the said or h estate, from the day of 18 , to the day of 18 . And that the several sums of money in the said account mentioned to have been retained, paid, and allowed have been really retained and paid for the purposes therein mentioned, and that all the matters and things therein stated are true, and that there is no error or omission in the said account, to the best of knowledge and belief. And further say that and sureties are living, and that neither of them has been declared bankrupt nor compounded with his creditors.

Sworn

AFFIDAVIT OF COMMITTEE IN LIEU OF ACCOUNT.[1]

s. 108, subs.(2) of Act of 1890, *ante*.

In Lunacy.

In the matter of , a person of unsound mind.

I, A.B., of, &c., the committee of the estate of the above-named make oath and say, that the whole of h property is as follows :—

(*Here state briefly the property.*)

And that the amount of the clear net income of the said is or thereabouts. And that under an order, bearing date, &c., the whole of the income * of the said is ordered to be retained by me, and applied in and for h maintenance, that I have received no money or effects as such committee besides such annual income, and that the whole of such income has been duly paid or applied in such maintenance. And I further say that , of, &c., and of, &c., my sureties, are living,

* Or the whole of the income not exceeding, etc., or as the case may be.

[1] This form is in practice found too narrow in its scope and will probably be revised and amended ere long.

† If any change, state the facts.

and that neither of them has been declared bankrupt or compounded with his creditors.

Sworn, etc.

To be sworn before "A Commissioner for Oaths."

Note.—On leaving the affidavit take an appointment to proceed, and leave the office copy of the order for maintenance, and if there be any fund in court, the paymaster's transcript of account and certificate of such fund.

BOND OF RECEIVER.

s. 108, subs. (2) of Act of 1890 *ante*.

IN LUNACY.

In the matter of , a person of unsound mind, not so found by inquisition.

Know all men by these presents that we of in the county of of in the county of and of in the county of are bound and firmly obliged to our most Serene Lady, Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, in the sum of £ of good and lawful money of Great Britain, to be paid to the same Lady the Queen, her heirs or successors, to which payment well and truly to be made we bind ourselves and every of us jointly and severally, our heirs, executors, and administrators, and the heirs, executors, and administrators of each of us jointly by these presents, sealed with our seals, dated the day of in the th year of the reign of our said now Lady the Queen, etc., and in the year of our Lord 189 .

A
In the matter of a person of unsound mind, not so found by inquisition.
This is the Bond referred to in the Affidavit of sworn before me this day of 189 .

Whereas by an order dated the day of 189 made in the matter of the above-named residing at in the county of the said was authorised, upon completing such security as the Masters in Lunacy should approve of, to exercise such of the powers of a committee of the estate of the said as thereby directed. And whereas the Masters in Lunacy have approved of the said and as sureties of the said and have allowed this bond as a proper security, as testified by the affixing of their seal in the margin hereof.

Now the condition of the above-written obligation is such that if the said shall duly account as directed by the said order for the estate, moneys, or effects which may come to h hands as such receiver, and shall duly pay or deliver up the same, and shall duly observe, perform, and keep the orders and directions of the Lord Chancellor of Great Britain, Lord Keeper, Lords Commissioners for the custody of the Great Seal of Great Britain, or the Lords Justices, or other the person or persons for the time being entrusted by the Queen's sign manual, or her successors, with the care and commitment of the custody of the persons and estates of idiots, lunatics, and persons of unsound mind, or any of them, or of the said Masters, for the time being made, or hereafter to be made, touching or concerning the said or h estate, that then the said obligation to be void, or else the same to stand, remain, and be in full force and virtue.

This Bond, being the Bond referred to in the certificate made in this matter dated the day of 189 , has been allowed.

Signed, sealed, and delivered by the above-named

Signed, sealed, and delivered by the above-named

BOND TO GUARANTEE COMMITTEE OF ESTATE.[1]

s. 108, subs.(2) of Act of 1890, *ante*.

In Lunacy.

In the matter of , a person of unsound mind.

In the matter of a person of unsound mind. This is the Bond referred to in the affidavit of sworn before me this day of 18 .

Know all men by these presents that we of in the county of and the Limited, whose office is situate at No in the Company of hereunder called the are bound and firmly obliged to our most Serene Lady, Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, in the sum of pounds of good and lawful money of Great Britain, to be paid to the same Lady the Queen, her heirs or successors, to which payment well and truly to be made I the said for myself, my heirs, executors, and administrators, and every of them, and we the for ourselves and our successors do bind ourselves jointly and severally firmly by these presents, sealed with the seal of the said , and also with the common seal of the said this day of in the year of the reign of our said Lady the Queen, etc., and in the year of our Lord 189 .

The condition of the above-written obligation is such that whereas the custody, regulation, occupation, disposition, and receipt of the estate of the above-named residing at a person of unsound mind, have been committed and granted to the above bounden the said being unable to govern self or to manage h estate during the continuance of h unsoundness of mind. And whereas the said has proposed the as a surety to our Sovereign Lady the Queen for the due performance of the duties of h , the said as the committee of the estate of the said (at an annual premium of £ the first payment whereof has been made prior to the execution hereof), and the has been approved of as such surety by the Masters in Lunacy, as appears by the affixing of the seal of the said Masters upon these presents .

If, therefore, the said shall yearly, or oftener if h be thereunto required, make a just and true account of all and singular the rents, issues, and profits of the real estate of the said and also of his personal estate and the profits thereof as now are or hereafter shall come to h hands, custody, or possession, or which h may receive out of or concerning the said estate, and shall carefully observe, perform, and keep the orders and directions of the Lord Chancellor of Great Britain, Lord Keeper, Lords Commissioners for the custody of the Great Seal of Great Britain, or the Lords Justices, or other the person or persons for the time being entrusted by the Queen's sign manual, or her successors, with the care and commitment of the custody of the persons and estates of idiots, lunatics, and persons of unsound mind or any of them, or of the said trustees for the time being made, or hereafter to be made, touching or concerning the said h estate, and touching all such moneys as shall yearly remain due upon the foot of the account duly taken by the Masters in Lunacy, and filed in the office for that purpose appointed, and shall be careful to see the houses, buildings, and structures of the said to be well and sufficiently repaired, and so kept and maintained during the continuance of the said grant, and shall carefully preserve and keep all the deeds, evidences, and writings touching the manors, messuages, lands, tenements, hereditaments and estates of the said as now are or hereafter shall come to h hands, custody, or possession, and shall in all things demean h self as a careful and faithful grantee and committee of the estate of the said that then the said obligation to be void, or else the same to stand, remain, and be in full force and virtue: Provided always that if the said do not within fifteen days after the day of in each and every subsequent year pay or cause to be paid at the office of the the annual premium or sum of £ , then the shall at any time after such default in payment be at liberty to apply by summons to the Masters in Lunacy to be relieved from all further liability as such surety as aforesaid: Provided always that a certificate or certificates under the seal of the said Masters of the amount which the said as such committee as assessed is liable to pay and has not paid shall be sufficient and conclusive evidence against the said h heirs, executors, and

[1] A similar bond has recently been accepted by the Masters in a case of appointment of a steward of the manor of a lunatic lord. This may be regarded as settling the practice. A form of recognisance is given in Elmer, App. No. 130.

administrators, and against the Society of the of the contents of the said certificate or certificates, and that this bond has become forfeited to the amount of the sum stated in such certificate or certificates, and that such sum forms a valid and binding claim not only against the said h heirs, executors, and administrators, but also against the and the funds and property thereof: Provided always, and it is further agreed between the said and the that the said on being discharged from h office of, or ceasing to act as such committee as aforesaid, shall forthwith give notice in writing thereof to the

Signed, sealed, and delivered by the said in the presence of }

The following endorsement by the Master appears on the back of the bond:—]

This bond, being the bond referred to in the certificate made in the above matter on the day of 189 has been allowed.

The seal of the was hereunto affixed in the presence of }

Signed for and on behalf of the } Directors

General Manager.

s. 108, subs.(2) of Act of 1890, *ante*.

BOND TO GUARANTEE RECEIVER.

In Lunacy.

In the matter of , a person of unsound mind, not so found by inquisition.

Know all men by these presents that we of in the county of and Limited, whose office is situate at in the county of (hereinafter called the Society) are bound and firmly obliged to our most Serene Lady, Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, in the sum of of good and lawful money of Great Britain, to be paid to the same Lady the Queen, her heirs or successors, to which payment well and truly to be made I, the said for myself, my heirs, executors, and administrators, and every of them, and we the Society for ourselves and our successors do bind ourselves jointly and severally firmly by these presents, sealed with the seal of the said , and also with the common seal of the said this day of now in the year of the reign of our said Lady the Queen, etc., and in the year of our Lord 189 .

The condition of the above-written obligation is such that whereas by an order dated the day of 189 made in the matter of the above-named residing at in the county of , the said was authorised upon completing such security as the Masters in Lunacy should approve of to exercise such of the powers of a committee of the estate of the said as thereby directed. And whereas the said has proposed the as a surety to our Sovereign Lady the Queen for the due performance of the duties of the said as the receiver of the estate of the said (at an annual premium of £ the first payment whereof has been made prior to the execution hereof), and the has been approved of as such surety by Esquire, Q.C., one of the Masters in Lunacy, as appears by the affixing of the seal of the said Masters upon the endorsement of these presents.

If, therefore, the said shall yearly, or oftener if h be thereunto required, make a just and true account of all and singular the rents, issues, and profits of the real estate of the said , and also of h personal estate, and the profits thereof as now are or hereafter shall come to h hands, custody, or possession, or which h may receive out of or concerning the said estate, and shall carefully observe, perform, and keep the orders and directions of the Lord Chancellor of Great Britain, Lord Keeper, Lords Commissioners for the custody of the Great Seal of Great Britain, or the Lords Justices, or other the person or persons for

A
In the matter of , a person of unsound mind, not so found by inquisition.
This is the Bond referred to in the Affidavit of sworn before me this day of 189 .

the time being entrusted by the Queen's sign manual, or her successors, with the care and commitment of the custody of the persons and estates of idiots, lunatics, and persons of unsound mind, or any of them, or of the said Masters, for the time being made, or hereafter to be made, touching or concerning the said and h estate, and touching all such moneys as shall yearly remain due upon the foot of the account duly taken by the said Masters, and filed in the office for that purpose appointed, and shall be careful to see the houses, buildings, and structures of the said to be well and sufficiently repaired, and so kept and maintained during the continuance of the said grant, and shall carefully preserve and keep all the deeds, evidences, and writings touching the manors, messuages, lands, tenements, hereditaments, and estates of the said as now are or hereafter shall come to h hands, custody, or possession, and shall in all things demean h self as a careful and faithful receiver of the estate of the said that then the said obligation to be void, or else the same to stand, remain, and be in full force and virtue: Provided always that if the said do not within fifteen days after the day of in each and every subsequent year pay or cause to be paid at the office of the the annual premium or sum of £ , then the Society shall at any time after such default in payment be at liberty to apply by summons to the said Masters to be relieved from all further liability as such surety as aforesaid: Provided always that a certificate or certificates under the seal of the said Masters of the amount which the said as such receiver as aforesaid is liable to pay and has not paid shall be sufficient and conclusive evidence against the said his heirs, executors, and administrators, and against the of the truth of the contents of the said certificate or certificates, and that this bond has become forfeited to the amount of the sum stated in such certificate or certificates, and that such sum forms a valid and binding claim not only against the said his heirs, executors, and administrators, but also against the and the funds and property thereof: Provided always, and it is further agreed between the said and the Society, that the said on being discharged from his office of or ceasing to act as such receiver as aforesaid shall forthwith give notice in writing thereof to the .

Signed, sealed, and delivered by the said }
in the presence of }

The seal of the was hereunto affixed in the presence of .

Signed for and on behalf of the } Directors

General Manager.

The following endorsement appears on the back of the bond:—

This bond, being the bond referred to in the certificate made in the above matter the day of 189 has been allowed.

s. 108, subs.(2) of Act of 1890, *ante.*

PROCEEDING ON ACCOUNTS[1] (First Account of Person appointed to exercise Powers of Committee of Estate).

(Note.—The account, as brought in, should be bookwise, with a quarter margin, and the lines not close.)

In Lunacy. (FORM OF ACCOUNT).

In the matter of *A.B.*, a person of unsound mind, not so found by inquisition.

The First Account of John Thompson, the person appointed by an order in this matter, dated the 18 , to exercise certain of the powers of a committee of the estate of the above-named *A.B.*, of his receipts, and of his payments and allowances, from the time of his appointment to the day of 18 .

Receipts for Rents.

	Premises.	Tenants.	Arrears at 1st January 18 .	Annual Rents.	Rents received.	Deductions for Income Tax.	Arrears at 31st Dec. 18 .	Observations.
			£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	*Here mention any variations of rent,—any period during which a tenement has been unoccupied, and any arrear of rent considered irrecoverable, etc.*
	Norwich.							
1	House	J. Holmes . . .	15 0 0	30 0 0	30 0 0[2]	2 0 0	15 0 0	
2	Stables and garden . .	P. Thomas . . .	5 0 0	10 0 0	10 0 0	0 13 4		
	Same premises . . .	S. Hay . . .	...	...	5 0 0	0 6 8	...	Hay succeeds Thomas, Midsummer 18 , at the same rent (£10).
	Ipswich.							
3	House	S. Hobbs . . .	20 0 0	40 0 0	40 0 0	2 13 4	20 0 0	
4	Malthouses . . .	P. Stiles . . .	5 0 0	10 0 0	15 0 0	1 0 0		
	Bungay.							
5	Field	R. Jones . . .	7 0 0	14 0 0	21 0 0	1 8 0		
6	Cottage	T. Simons . . .	2 0 0	4 0 0	2 0 0	0 2 8	4 0 0	
etc.	etc.	etc.	etc.	etc.	etc.	etc.	etc.	
		Totals . .	272 3 4	794 3 6	920 7 2	80 0 0	253 5 9	
					80 0 0	Income tax deducted.		
					840 7 2	Net amount received.		

[1] The solicitors are requested to leave *with the account* the costs relating thereto, all the vouchers (which are to be complete and arranged), and office copies of all orders, Paymaster-General's transcript, etc. (if any) in the matter, which will be handed back at the close of the appointment. On every proceeding, these documents (excepting the vouchers) are to be produced when the appointment is attended. On attending the appointment to proceed, be prepared to dispose of the account, and costs upon it, on one attendance, if practicable. Sufficient notice of each appointment to be given, and copy of the account also supplied, to the solicitors for any other persons who may have liberty to attend the proceedings to ensure their being prepared. The appointments to allow time enough to dispose of the business.

[2] The gross amount of rent received from each tenant in respect of each holding, for the whole period of the account, to be entered here *in one sum* opposite each tenant's name.

Note.—*The mention of each holding need not be more full than is necessary to identify and connect one account with another. The holdings to be numbered, and preserved in the same order in successive accounts.*

GENERAL RECEIPTS.

18 .		£ s. d.
Dec. 5	Of Samuel Roberts, one year's interest, at 4 per cent, on £2000 mortgage to 29th September 18 , less tax .	74 13 4
18 .		
Jan. 10	Of Paymaster-General for Chancery, half a year's dividends on £1000 new consols, due 18 , less tax .	14 0 0
July 20	Do. do., due	14 0 0
	(*If there be several receipts from the same source, enter them consecutively.*)	
Feb. 10	Of said Paymaster-General, pursuant to order dated 22nd November 18	120 0 0
	etc., etc., etc.	

PAYMENTS AND ALLOWANCES.

18 .	CHARGES ON THE ESTATE.	£ s. d.
May 5	To Thomas Stone, half-year's interest, at 5 per cent, on mortgage for £1000 to 25th March 18 , less tax .	23 6 8
Oct. 10	To do. do., to 29th September 18	23 6 8
	etc., etc.	etc.
	(*Place all payments in respect of the same charge consecutively.*)	
	DEBTS PAID, PURSUANT TO ORDER OF 18 .	
	John Smith	20 0 0
	Edward Jones	14 10 0
	Joseph Robinson	10 0 0
	Thomas Brown	12 0 0
	(*These to be placed in strict uniformity with the schedule (if any) to the order or to the evidence in which they are contained.*)	
18 .	RENT, TAXES, AND INSURANCE.	
Jan. 1	Chief rent	0 4 10
,, 6	Land tax on house in occupation of John Holmes, for the year ending 29th September 18 . . .	2 0 0
,,	Sun Insurance Company, for insurance on same house, for the year ending 31st December 18 . . .	3 0 0
	etc., etc.	etc.
	(*Place several payments in respect of the same rent, tax, etc., consecutively. State as to the payments in respect of what portions of the property they are paid. And as to periodical payments, mention the time in respect of which they are made.*)	

PAYMENTS AND ALLOWANCES—*continued.*

18 .	REPAIRS.	£ s. d.
	House in occupation of J. Holmes.	
March 7	To Thomas Gee, builder	150 0 0
	House in occupation of S. Hobbs.	
	To Samuel Jones, bricklayer	23 5 0
	To R. Sanders, carpenter	7 15 0
	etc., etc.	etc.
	(*Enter all repairs in respect of each portion of the property together under the head of that portion.*)	
	MAINTENANCE.	
March 29	To John Collins, one quarter's allowance for maintenance to 18	100 0 0
July 1	Do. for quarter to 18	100 0 0
	etc., etc.	etc.
	(*Entering all payments in respect of maintenance consecutively.*)	
	MISCELLANEOUS.	
	One year's percentage on lunatic's income to 1st March 18	20 0 0
Dec. 31	To Robert Giles, poundage for collecting the rents of the small houses (£50) received at £5 per cent . .	2 10 0
	etc., etc.	
	Cost of passing this account	
	(*Any petty payments to be entered in the aggregate.*)	

SUMMARY.

RECEIPTS.	£ s. d.	£ s. d.
Rents	840 7 2	
General receipts	...	
Total receipts	. . £	
PAYMENTS.		
Charges	...	
Debts	...	
Rent, taxes, etc.	...	
Repairs	...	
Maintenance	...	
Miscellaneous	...	
Total payments and allowances . .	£	
Balance due from the said *A.B.* . .	£	

The above balance to be paid into Court on or before the day of 18 .

The amount of fund in Court to which the above-named *A.B.* was entitled on the day of 18 , was as follows:—

New consols £1000

etc.

The next account made up to 18 to be brought in on or before 18 .

NOTE.—*The account must not be sworn till it has been quite disposed of in the Masters' office, where the affidavit of verification is prepared.*

FORM OF COMMITTEE'S ACCOUNT

If the first account this will be "from the time of his (or her) appointment."

(NOTE.—The account, as brought in, should be bookwise, with a quarter margin, and the lines not close.)

IN LUNACY.

(FORM OF ACCOUNT.)

In the matter of *A.B.*, a person of unsound mind.

THE ACCOUNT of JOHN THOMPSON, the committee of the estate, of his receipts, and of his payments and allowances as such committee, from the day of 18 to the day of 18 .

RECEIPTS FOR RENTS.

	Premises.	Tenants.	Arrears at 1st January 18 .	Annual Rents.	Rents received.	Deductions for Income Tax.	Arrears at 31st Dec. 18 .	Observations.
			£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	*Here mention any variations of rent,—any period during which a tenement has been unoccupied, and any arrear of rent considered irrecoverable, etc.*
	NORWICH.							
1	House	J. Holmes . . .	15 0 0	30 0 0	30 0 0[1]	2 0 0	15 0 0	
2	Stables and garden . .	P. Thomas . . .	5 0 0	10 0 0	10 0 0	0 13 4		
	Same premises . . .	S. Hay . . .	...	...	5 0 0	0 6 8	...	Hay succeeds Thomas, Midsummer 18 , at the same rent (£10).
	IPSWICH.							
3	House	S. Hobbs . . .	20 0 0	40 0 0	40 0 0	2 13 4	20 0 0	
4	Malthouses . . .	P. Stiles . . .	5 0 0	10 0 0	15 0 0	1 0 0		
	BUNGAY.							
5	Field	R. Jones . . .	7 0 0	14 0 0	21 0 0	1 8 0		
6	Cottage	T. Simons . . .	2 0 0	4 0 0	2 0 0	0 2 8	4 0 0	
etc.	etc.	etc.	etc.	etc.	etc.	etc.	etc.	
		Totals . .	272 3 4	794 3 6	920 7 2	80 0 0	253 5 9	
					80 0 0	Income tax deducted.		
					840 7 2	Net amount received.		

[1] The gross amount of rent received from each tenant in respect of each holding, for the whole period of the account, to be entered here *in one sum* opposite each tenant's name.

NOTE.—*The mention of each holding need not be more full than is necessary to identify and connect one account with another. The holdings to be numbered, and preserved in the same order in successive accounts.*

GENERAL RECEIPTS.

18 .		£	s.	d.
	Balance due from committee on account .	125	0	0
Dec. 5	Of Samuel Roberts, one year's interest, at 4 per cent, on £2000 mortgage to 29th September 18 (deducting £5 : 6 : 8 for income tax)	74	13	4
18 . Jan. 10	Of Paymaster-General for Chancery, half a year's dividends on £1000 3 per cent consols, due 5th instant (deducting £1 income tax)	14	0	0
July 20	Do. do., due 5th instant (deducting income tax) .	14	0	0
	(If there be several receipts from the same source, enter them consecutively.)			
Feb. 10	Of said Paymaster-General, pursuant to order made 22nd November 18	120	0	0
	etc., etc., etc.			

PAYMENTS AND ALLOWANCES.

18 .	CHARGES ON THE ESTATE.	£	s.	d.
May 5	To Thomas Stone, half-year's interest, at 5 per cent, on mortgage for £1000 to 25th March 18 , less £1 : 13 : 4 income tax	23	6	8
Oct. 10.	To do. do., to 29th September 18 , less do. . .	23	6	8
	etc., etc.			
	(Place all payments in respect of the same charge consecutively.)			
	DEBTS PAID, PURSUANT TO ORDER OF 18 .			
	John Smith	20	0	0
	Edward Jones	14	10	0
	Joseph Robinson	10	0	0
	Thomas Brown	12	0	0
	(These to be placed in strict uniformity with the Schedule to the Master's report.)			
18 .	RENT, TAXES, AND INSURANCE.			
Jan. 1	Chief rent	0	4	10
,, 6	Land tax on house in occupation of John Holmes, for the year ending 29th September 18 . . .	2	0	0
,,	Sun Insurance Company, for insurance on same house, for the year ending 31st December 18 . . .	3	0	0
	etc., etc.	etc.		
	(Place several payments in respect of the same rent, tax, etc., consecutively. State as to the payments in respect of what portions of the property they are paid. And as to periodical payments, mention the time in respect of which they are made.)			

PAYMENTS AND ALLOWANCES—*continued.*

18 .	REPAIRS.	£ s. d.
	House in occupation of J. Holmes.	
March 7	To Thomas Gee, builder	150 0 0
	House in occupation of S. Hobbs.	
	To Samuel Jones, bricklayer	23 5 0
	To R. Sanders, carpenter	7 15 0
	etc., etc.	etc.
	(*Enter all repairs in respect of each portion of the property together under the head of that portion.*)	
	MAINTENANCE.	
March 29	To John Collins, committee of the person, for one quarter's allowance for maintenance to the 25th instant	100 0 0
July 1	Do. for quarter to 24th ult.	100 0 0
	etc., etc.	etc.
	(*Entering all payments in respect of maintenance consecutively.*)	
	MISCELLANEOUS.	
	Paid into Court on the day of 18 , balance on first account	125 0 0
	One year's percentage on lunatic's income to 28th October 18	20 0 0
Dec. 31	To Robert Giles, poundage for collecting the rents of the small houses (£50) received at 5 per cent .	2 10 0
	etc., etc.	etc.
	Costs of committee on passing this account . . .	
	To Messrs. Roberts and Co., costs of next of kin thereon	
	(*Any petty payments to be entered in the aggregate.*)	

SUMMARY.

RECEIPTS.	£ s. d.	£ s. d.
Rents	840 7 2	
General receipts	...	
Total receipts	. . £	
PAYMENTS.		
Charges	...	
Debts	...	
Rent, taxes, etc.	...	
Repairs	...	
Maintenance	...	
Miscellaneous	...	
Total payments and allowances . . .	£	
Balance due from the committee . . .	£	

The above balance to be paid into Court on or before the day of 18 .

The amount of fund in Court to which the above-named *A.B.* was entitled on the day of 18 , was as follows :—

In consolidated £3 per cent annuities £1000

etc.

The next account made up to 18 to be brought in on or before 18 .

NOTE.—*The account must not be sworn till it has been quite disposed of in the Masters' office, where the affidavit of verification is prepared.*

s. 108, subs.(2) of Act of 1890, *ante* p. 350.

ORDER FOR ALLOWANCE WITHOUT LIABILITY TO ACCOUNT.

(*Re Weld*, 1882, 20 Ch.D., at p. 453.)

Order that the said S. J. W. (*committee of the estate*) be at liberty to retain, for his own occupation and use and that of his said sisters, L. Castle aforesaid, and the said furniture and effects, including the said heirlooms therein, and the gardens and grounds and premises set out in the fifth and sixth schedules hereto, and the right of shooting over the said estates, and that the sum of £4000 a year should be allowed to him from the 8th day of December 1877 for his expenses in reference thereto.

s. 108, subs.(2) of Act of 1890, *ante*.

ANOTHER ORDER FOR ALLOWANCE WITHOUT LIABILITY TO ACCOUNT.

(*Re Weld*, 1882, 20 Ch.D., at p. 461.)

(Cp. *re Drummond*, 1836, 1 My. & Cr. 627.)

Refer it to the Master to ascertain which of the debts in the second part of the first schedule to the receiver's affidavit and to what amounts respectively, were properly incurred in keeping up an establishment at L. Castle suitable to the condition, standing, and circumstances of the family, and for the purpose of preserving such castle and the garden and grounds attached thereto in proper order and condition, so that if the lunatic should return to his castle in a sane state of mind he might find his family residence fit and ready for his occupation as the head of his family; this Court being of opinion that the establishment includes a sufficient number of servants, horses and carriages, and the expenses incident thereto, and includes the food and wine supplied to the head of the family for himself and his three sisters while living there, having regard to their annual total expenditure, for the purposes aforesaid, not exceeding £4000 per annum.

s. 108, subs.(2) of Act of 1890, *ante* p. 351.

ORDER FOR APPOINTMENT OF INSPECTOR (UNDER COMMITTEE) AT FIXED SALARY.

(*Re Errington*, 1826, 2 Russ. 567.)

Order that (*the committee*) be at liberty to engage A. as an inspector at a salary of £40 a year to be paid out of the profits of the estate.

s. 108, subs.(2) of Act of 1890, *ante* p. 351.

ORDER FOR INQUIRY BY MASTER AS TO REASONABLE ALLOWANCE TO COMMITTEE.

(*Ex parte Fermor*, 1821, Jac. 406.)

Order that the Master inquire, and certify, what reasonable allowance . . . it would be fit and proper to make to the committee for his care and pains in the management of (*the lunatic's*) estate, and in collecting and receiving the rents thereof, with liberty to state any special circumstances.

s. 108, subs.(2) of Act of 1890, *ante*.

REFERENCE TO MASTER TO INQUIRE AS TO EXTRAORDINARY EXPENDITURE BY RECEIVER.[1]

(*Tempest* v. *Ord*, 1816, 2 Mer. at p. 56.)

Refer to the Master to consider and state to the Court whether the buildings then being erected were fit and necessary and for the benefit of the several persons interested in the collieries; after the Master should have made his report, such further order to be made relating thereto as should appear to be just. The present order to be without prejudice to any question we, A., might think proper to make to the Court after the Master should have made his report.

[1] As to appointment of interim committee, see *re Aguilar*, 1823, Shelf. Lun. 234.

INSTRUCTIONS FOR SECURITY AND GRANT.

s. 108, subs.(2) of Act of 1890, *ante*.

IN LUNACY.

In the matter of , a person of unsound mind.

The order for inquiry describes the above-named as residing at in the county of .
The inquiry was held at on the 189 .
The verdict was that the said was a person of unsound mind.
The committee of the person in the county of
The committee of the estate in the county of
The sureties proposed are in the county of and in the county of
The present residence of the lunatic is
The date of the order (left herewith) appointing committee, etc., is 189 .

Dated 189 .

Solicitor to the committee.

INSTRUCTIONS FOR NEW SECURITY.

s. 108, subs.(2) of Act of 1890, *ante*.

IN LUNACY.

In the matter of , a person of unsound mind.

The committee of the person is of in the county of
The new committee of the estate is of in the county of
The sureties proposed are of in the county of and of in the county of
The lunatic resides at in the county of
The date of the order (left herewith) appointing new committee is the 189 .

Dated the day of 189 .

Solicitor to the new committee.

INSTRUCTIONS FOR FRESH SECURITY.

s. 108, subs.(2) of Act of 1890, *ante*.

The committee of the person is of in the county of
The committee of the estate is of in the county of . One of his sureties has died.
The fresh sureties proposed are of in the county of and of in the county of
The present residence of the lunatic is in the county of
The date of the order appointing committees, etc., is the 189 .

Dated 189 .

Solicitor to the committee.

DECLARATION OF LIABILITY OF SOLICITOR FOR IMPROPER PROCEEDINGS, see Seton, 5th ed., p. 942.

SUMMONS UNDER SECTION 116.

s. 116 of Act of 1890, *ante*.

IN LUNACY.

In the matter of A.B., a person alleged to be of unsound mind.

Let all parties concerned attend Master in Chambers at the Royal Courts of Justice, London, on day the day of at o'clock in the noon, on the hearing of an application on the part of C.D. of * (*indicate relationship or connection*).

* Here state on whose behalf the application is made and its object.

1. That may be appointed to exercise such of the powers of a committee of estate as the Judge may direct.

2. That (*here ask specific directions relating to anything connected with the case requiring a direction in the proposed order*).

3.

4.

That the costs of, and incident to this application be taxed and paid (*indicate in what way these are to be paid*).

Dated this day of 18 .

This summons was taken out by of solicitor for

To (*the summons should be addressed to the alleged lunatic, and must be personally served upon him at least seven clear days before its return*).

s. 116, subs.(1) (*c*) of Act of 1890, *ante*.

ORDER UNDER SECTION 116, SUBS. (1) (*c*).

In Lunacy.

Thursday the day of 189 .

In the matter of A.B., a person of unsound mind, not so found by inquisition.

Upon the application of C.B., the wife of the above-named A.B., and having been attended by , and upon reading the following affidavits, viz. and the undertaking of the said applicant dated whereby she undertakes to apply all such moneys as she may receive belonging to the said A.B. in such manner as she may be directed by any order of the Judge or the Masters in Lunacy, and to account for such moneys and for all moneys which she may receive on account of the said A.B. or his estate when required; and further to give such security for the due application of and accounting for all such moneys as may be required by any such order as aforesaid, and to obtain and send every six months to the Masters in Lunacy a report from a duly qualified person as to the mental and bodily condition of the said A.B.

And it having been established to my satisfaction that the said A.B. is lawfully detained as a lunatic, though not so found by inquisition:

I do order—

1. That upon the certificate of the Masters in Lunacy that she has completed her security, the said C.B. of in the county of , the wife of the above-named A.B., be, and is hereby authorised to receive from D.E. and F.G., the trustees of a certain indenture of settlement dated , or other the trustees for the time being of the said settlement, the income payable to the said A.B. thereunder, including any in arrear, and to give a valid discharge for the same.
2. That the said C.B. do apply in the maintenance of the said A.B. a sum not exceeding per annum from the April 189 .
3. That, subject to such allowance, the said C.B. be authorised to retain the whole net surplus income of the said A.B., not exceeding per annum, for the maintenance and support of herself and three infant children, from the day of April 189 .
4. That the said C.B. be authorised to sell, either by public auction or by private contract, for the best price obtainable, the furniture and effects belonging to the said A.B., and to apply the net proceeds as hereinafter provided.
5. That the said C.B. be authorised to receive from Banking Company, Limited, and to give a valid discharge for the same, the sum of cash, together with all interest thereon standing to the credit of the said A.B. at the branch of the same bank.
6. That out of the net proceeds of the sale of the furniture and effects hereinbefore referred to, and the cash to be received in pursuance of the last preceding direction, the said C.B. be authorised to pay the debts owing by, or on behalf of, the said A.B., amounting in all to and referred to in paragraphs 3 to 6 of her affidavit sworn.
7. That the reasonable and proper costs of the said C.B. attending of, and consequent upon this application , etc., be taxed, and when certified be paid by the said C.B. as herein directed.

ORDER DETERMINING PROCEEDINGS UNDER SECTION 116.

s. 116 of Act of 1890, *ante*.

IN LUNACY.

Thursday the day of 189 .

In the matter of A.B., late a person of unsound mind, not so found by inquisition.

Upon the application of the above-named A.B., and having been attended by his solicitors, and by the solicitor for his wife C.B., who in pursuance of an order, dated 189 , was appointed to receive and apply the income of his estate, and to carry out the directions therein contained, and upon reading the said order, the affidavit of , and the report of , one of the Lord Chancellor's Visitors in Lunacy, dated 189 :

I do order—

1. That all proceedings under the said order in this matter, dated 189 , and the authority thereby given to the said C.B. to carry out the direction therein contained, be superseded and determined, and that the said A.B. be restored to the management of his property and the receipt of his income from the date hereof.
2. That upon the passing of an account by the said C.B., and the payment of the balance (if any) to be found due thereon to the said A.B., the security entered into by her be discharged.
3. That the reasonable and proper costs of the said A.B. of attending upon this application, and her like costs incurred in relation to this matter, be discharged.

ORDER FOR TAXATION AND PAYMENT OF COSTS ON DEATH OF LUNATIC.

ss. 109 and 116 of Act of 1890, *ante*.

Tuesday the day of 189 .

In the matter of A.B. (deceased), and in the matter of the Acts 53 Vict. c. 5, and 54 & 55 Vict. c. 65.

Upon the application of C.D. and E.F., the applicants in a summons issued in the above matter on the , and having been attended by the solicitors for the said applicants, and by G.H., the executor of the will of the said A.B., and upon reading the said summons and the following affidavits, viz.—

And being of opinion that the proceedings referred to in the said summons taken by the said applicants were for the benefit of the said A.B., and that the costs hereinafter referred to were properly incurred for her benefit :

I do order—

That the reasonable and proper costs of the said applicants of, incident to, and consequent upon this application, and their like costs of, incident to, and consequent upon their application by summons dated , be taxed, and I do declare such costs, when taxed and certified, to have been properly incurred for the benefit of the said A.B., and to be payable out of the estate in due course of administration.

RECONVEYANCE ON BEHALF OF LUNATIC MORTGAGEE.[1]

s. 117 of Act of 1890, *ante*.

This indenture, made, etc., between C.D. of , the duly appointed committee of the estate of A.B., a person of unsound mind, and the person appointed to convey as hereinafter mentioned, of the one part, and E.F. (*mortgagor*) of of the other part : Whereas (*usual recitals*) : And whereas, by an order made in the matter of the said A.B., and in other matters, and dated the day of 189 , it was ordered (*recite order*, e.g. *as follows*) that on the said E.F. paying into Court to "the credit of A.B., a person of unsound mind," the said principal sum of £ , and paying the said C.D., as such committee as aforesaid, all interest due on the

[1] Cp. sec. 135 of the Lunacy Act 1890. In case of reconveyance the lunatic mortgagee does not reconvey by his committee, having regard to the section above referred to.

said principal sum of £ , secured by the said indenture, dated , the said C.D. should convey in the place of the said A.B. to the said E.F., or as he might direct, the hereditaments comprised in the principal indenture for the estate vested in the said A.B. as mortgagee therein discharged from the principal money and interest thereby secured, and that such reconveyance be settled and approved by the Masters in Lunacy: And whereas, etc. (*recite payment of principal into Court and payment of interest to C.D.*): And whereas (*recite Master's approval*). Now this indenture witnesseth, etc.

In witness, etc.

s. 118 of Act of 1890, *ante*.

CHARGE ON LUNATIC'S REAL ESTATE UNDER SECTION 118 OF THE LUNACY ACT 1890.

Declaration against Sale or Foreclosure in Lunatic's Lifetime.

And it is hereby agreed and declared that so long as the interest payable in respect of the said principal money hereby secured shall be paid on the days on which the same shall become payable, and the said A.B. (*the lunatic*) shall live, the said C.D. shall have no right or power to sell or foreclose the hereditaments hereby expressed to be granted, or otherwise to realise this security, or require, or enforce payment of the principal moneys intended to be hereby secured.

s. 120 (*a*) of Act of 1890, *ante*.

CONVEYANCE OF FREEHOLDS BY A LUNATIC VENDOR—PURCHASE-MONEY TO BE PAID INTO COURT BEFORE COMPLETION.[1]

This indenture, made the day of , between A.B. of , a person of unsound mind, acting by C.D., the duly appointed committee of his estate (*in case of lunatic not so found by inquisition:* "a person of unsound mind not so found by inquisition, acting by C.D., the person appointed to exercise powers of a committee of his estate") of the one part, and E.F. (*purchaser*) of of the other part: Whereas (*ordinary recitals as to title*): And whereas, by an order dated the day of 189 , made in the matter of the lunacy of the said A.B., it was ordered that upon the lodgment of £ (*purchase money*) in Court (*recite order*).

And whereas Esq., Q.C., one of the Masters in Lunacy, has settled and approved these presents as a proper conveyance of the said premises to be executed in pursuance of the said order, and in testimony of such his approval the seal of the said Masters has been affixed in the margin hereof: And whereas the said E.F. did on the day of 189 pay into Court the said sum of £ to the credit of "A.B., a person of unsound mind," "proceeds of real estate" (*or the credit mentioned in the order*): Now this indenture witnesseth that, in pursuance of the said agreement and order, and in consideration of the sum of £ , the said A.B., acting by the said C.D., as aforesaid, as beneficial owner, does hereby grant unto the said E.F. and his heirs all that, etc. To hold, etc.

(*Covenants and acknowledgments, if any, by vendor are to be made in the name of A.B.*, "acting as aforesaid.")

In witness, etc.

s. 120 (*d*) of Act of 1890, *ante*.

LEASE (LUNATIC LESSOR) FOR SEVEN, FOURTEEN, OR TWENTY-ONE YEARS.[2]

Recitals.

This indenture, made the day of 189 , between A.B. of , a person of unsound mind, acting by C.D. of , the committee of his estate, hereinafter called the lessor, of the one part, and E.F. of , hereinafter

[1] Stock should not be sold to raise purchase money till conveyance is settled (*re Meux*, 1866, W.N. 1866, 83).

[2] An easement of carrying water-pipes under land of which a lunatic has a term of years cannot be authorised under sec. 120 (*d*) of Act of 1890, *ante* (*re Arnott*, 1891, 35 S.J. 623). The consent of the Court is necessary to sale of ecclesiastical lease in the case of a lunatic so found (*re Cheshire*, 1871, L.R. 7 Ch. 50). The conveyance of the undivided share of a lunatic tenant in tail of property sold may be effected by declaring

called the lessee, of the other part: Whereas, by order dated the day of 189 , made in the matter of the lunacy of the said A.B., it was ordered (*recite paragraph of order as to lease*) that the said A.B., as such committee as aforesaid, should be at liberty in the name and in the behalf of the said A.B. to grant to the said lessee a lease of the messuage and premises hereinafter more particularly described, for the term and at the rent and upon the conditions hereinafter mentioned, and in the name and in behalf of the said A.B. to execute the said lease when settled and approved by the Masters in Lunacy, on the lessee executing a counterpart thereof: And whereas , Esq, Q.C. (*recite approval of Master as in preceding form*): Now this indenture witnesseth.

Yielding, etc.

Covenants, etc., as in preceding form.

In witness, etc.

POWER OF ATTORNEY—LUNATIC GRANTOR APPOINTING ATTORNEY TO ARRANGE LUNATIC'S BUSINESS OR ESTATE ABROAD.[1]

s. 128 of Act of 1890, *ante*.

To all whom these presents shall come, A.B. of , a person of unsound mind, so duly found by inquisition, acting by C.D. of , the committee of his estate:

Sends greeting.

Whereas (*recite that lunatic is entitled to business or estate*): And whereas (*recite order in lunacy directing appointment of attorney and object of appointment*): And whereas (*recite approval of Master in usual form*).

Now those presents witness that the said A.B., acting by the said C.D. as aforesaid, with the approval aforesaid, doth hereby nominate, constitute, and appoint, etc.

In witness, etc.

FORM OF ORDER EXECUTING A POWER VESTED IN A LUNATIC.

s. 128 of Act of 1890, *ante*.

(*Re Bowmer*, 1859, 3 De G. & J., at p. 659.)

We do order that the said J.B., as the committee of the estate of the said G.B., exercise the power of appointing new trustees vested in the said G.B. by the said indenture of 18 , by appointing the said A.S. and S.R. trustees of the said indenture, and that it be referred to the Master in Lunacy to settle and approve of a proper deed for the appointment of the said trustees, and that the said deed, when so settled and approved of, be executed by the said committee in the name and on behalf of the said G.B., and we do order that the right to sue for, recover, and receive the sum of , deposited in the Bank of to the credit of , be vested in the said A.S. and S.R. on their appointment as trustees as aforesaid, and be, when received by them, held subject to the payment of the costs hereby directed to be taxed upon the trusts of the said indenture (Direction for taxation of the costs of the application and payment thereof out of the trust money).

APPOINTMENT OF NEW TRUSTEES OF SETTLEMENT, POWER TO APPOINT VESTED IN LUNATIC.

ss. 128, 129 of Act of 1890, *ante*.

This indenture, made the day of , between A.B. of , a person of unsound mind, so duly found by inquisition, acting by C.D., the duly appointed committee of his estate, of the one part, and E.F. of , and G.H. of (*the new trustees*), of the other part: Whereas (*recite settlement*): And whereas (*recite death, residence out of jurisdiction, etc., of retiring trustees*): And whereas, by an order dated the day of 189 , made in the matter of

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the lunatic a trustee of the share, and (instead of making a vesting order) appointing the chief clerk as the person to convey (*Caswells* v. *Sheen*, 1893, W.N. 1893, 187).

[1] As to inability of lunatic to execute power, see *Antrim* v. *Bucks*, 14 & 15 Car. II. C.C. 17; *Bayley* v. *Warburton*, 8 Geo. II. Com. Rep. 494; *Daniel* v. *Ubley*, 11 Car I., W. Jones 137; *Gibbons* v. *Moulton*, 1678, Finch 346; *Rich* v. *Beaumont*, 1727, 6 Bro. P.C. 152; *Wright* v. *Cadogan*, 1766, 1 Br. P.C. 486.

the lunacy of the said A.B., it was ordered (*recite order*, e.g. *as follows*) that the said C.D., as such committee of the estate as aforesaid, be at liberty, in the name and on behalf of the said A.B., to exercise the power vested in him as hereinbefore recited of appointing, etc., and that for the purpose of duly vesting any estate or interest in the trust funds comprised in the said settlement in the said new trustees thereof, the said C.D., as such committee as aforesaid, should be further at liberty in his name and on his behalf to execute such deeds and instruments as might be necessary and proper to be settled and approved by the Masters in Lunacy: And whereas (*recite property subject to trust*): And whereas (*recite Master's approval*): Now this indenture witnesseth (*usual form of appointment and declaration, having regard to Conveyancing Act* 1881).

In witness etc.

s. 135, subs.(5) of Act of 1890, *ante*.

FORM OF ORDER APPOINTING NEW TRUSTEE OF COPYHOLD ESTATE, ETC.

(*Re Hey's Will*, 1851, 9 Ha. 221.)

This Court doth order that T.R. of in the county of be appointed trustee of the will of J.H., dated, etc., in substitution for J.B. and W.R., both deceased. And it is ordered that the copyhold hereditaments and premises devised by the said testator's will, and now remaining unsold, do vest in T.R. for such estate and interest as the said J.B. and W.R., if living, would have, or in the said T.T.R., the customary heir of the said W.R. deceased now has therein. And the said T.T.R. declining to act in the execution of the trusts of the will of the said J.H., it is ordered that T.W. of , in the place of the said T.T.R., do all such acts as may be necessary to vest the said copyhold estate in the said T.R.

s. 299 of Act of 1890, *ante*.

APPLICATION OF LUNATIC'S PROPERTY. For form of order, see *Elderfield* v. *Goodall*, 1853, Seton, 5th ed., p. 911.

s. 330 of Act of 1890, *ante*.

SUMMONS UNDER SECTION 330 OF ACT OF 1890.

In the High Court of Justice,
Queen's Bench Division.

Master.

1894, W. No. 359.

Between J.M.W., *Plaintiff*,
and
J.C.H.B. and J.C.D., *Defendants*.

Let all parties concerned attend the Master in Chambers, Central Office, Royal Courts of Justice, Strand, London, on day the day of at o'clock in the noon, on the hearing of an application on the part of the defendants for an order that this action be stayed, on the ground that there is no reasonable ground for alleging want of reasonable care on the part of the defendants or either of them in respect of the certifying the plaintiff as a lunatic, or otherwise acting under the provisions of the Lunacy Act 1890, and on the ground that it is not alleged in the statement of claim that the defendants or either of them acted otherwise than in good faith and on the ground that this action is frivolous and vexatious, or in the alternative that this action be stayed, unless and until the plaintiff do pay into Court or give security for such sum as this Court shall think proper by way of security for the defendants' costs of action.

And that the costs of, and occasioned by, this application

Dated the day of

This summons was taken out by T.J.S. of in the city of London.

ORDER STAYING PROCEEDINGS UNDER SECTION 330 OF THE LUNACY ACT 1890.

s. 330 of Act of 1890, *ante*.

In the High Court of Justice,
Queen's Bench Division.

The Hon. Mr. Justice Kennedy, Judge in Chambers.

1894, W. No. 359.

Between J.M.W., *Plaintiff*,
and
J.C.H.B. and J.C.D., *Defendants*.

Upon hearing the counsel for the defendants and the plaintiff, and upon reading the affidavits, etc.

It is ordered that the application of the defendants for an order that this action be stayed on the ground that there is no reasonable ground for alleging want of reasonable care on the part of the defendants or either of them in respect of the certifying the plaintiff as a lunatic, or otherwise acting under the provisions of the Lunacy Act 1890, and on the ground that it is not alleged in the statement of claim that the defendants or either of them acted otherwise than in good faith, and on the ground that this action is frivolous and vexatious, or in the alternative that this action be stayed unless and until the plaintiff do pay into Court or give security for such time as this Court shall think proper by way of security for the defendants' costs of action be dismissed. And it is further ordered that the appeal may be marked "urgent" for the Divisional Court, and that the time for delivery of defence be extended until after the hearing of such appeal, or until further order, and that the costs be plaintiff's in any event. Fit for counsel.

Dated the 18th day of May 1894.

[Schedule to Order of Local Government Board.

s. 18, Lunacy Act 1891, *ante* p. 624.

SCHEDULE TO ORDER OF LOCAL GOVERNMENT BOARD, 15TH SEPTEMBER 1892.[1]

FORM A.

Lunatic Asylum belonging wholly to the County Council of the Administrative County of .

Financial Statement.

The District Auditors Act 1879 (42 Vict. c. 6), the Local Government Act 1888 (51 & 52 Vict. c. 41), and the Lunacy Act 1891 (54 & 55 Vict. c. 65).

STATEMENT OF THE RECEIPTS AND EXPENDITURE of the Visiting Committee of the above-mentioned Lunatic Asylum during the year ended the 31st March 189 .

PART I.—MAINTENANCE ACCOUNT.

RECEIPTS.	£ s. d.	£ s. d.
Balance in hand at the commencement of the year .	. . .	
Goods sold, namely :—	£ s. d.	
Farm and garden sales[2]		
Kitchen stuff and old stores . . .		
Sundries		
Sums received on account of the maintenance of—		
(*a*) Pauper Patients :	£ s. d.	
From guardians of unions and parishes within the county at s. d. per head per week		
From guardians of other unions and parishes at s. d. per head per week		
From the treasurer of the county for patients adjudged chargeable thereto		
From the treasurer of the county under sec. 269, subs. (9) of the Lunacy Act 1890, in respect of accommodation at other asylums, not exceeding one-fourth of the entire weekly charge		
From the treasurers of non-contributory counties and boroughs at s. d. per head per week . . .		
From the treasurers of non-contributory boroughs and of counties in respect of non-contributory boroughs for excess of weekly charge above ordinary rate (30 & 31 Vict. c. 106, s. 23)		

EXPENDITURE.	£ s. d.	£ s. d.
Balance due at the commencement of the year . .		
Salaries and wages (not including payments for labour appearing in the farming and gardening account, nor comprised in the building and repairs fund account), namely :—		
	£ s. d.	
Officers		
Attendants and others		
Provisions (including malt liquor in ordinary diet) .		
Malt liquor, wine, and spirits (not included in ordinary diet)		
Farm and garden expenses[4]		
Clothing—		
	£ s. d.	
For patients		
For attendants		
Necessaries (including fuel, lighting, and washing) .		
Surgery and dispensary		
Furniture and bedding		

or arrangement at s. d. per head per week		
Other receipts, if any, viz. :—		
_____		
_____		
_____		
(*b*) Private patients		
(*c*) Criminal patients :—	£ s. d.	
From parliamentary vote . . .		
From private funds of patients or their friends		
Funeral and removal expenses :—		
From guardians of unions and parishes		
From treasurers of counties and boroughs		
Other receipts, specifying them :— [3]		
	£ s. d.	
_____		
_____		
_____		
_____		
_____		
Total receipts		. . .
Balance due at the end of the year, viz. :—		
_____		
_____		
[4]		
Total of receipts and balances . . . . £		

Payments to treasurers of other asylums for patients under contract or arrangement		
Transfers to the building and repairs fund account, namely :—		
	£ s. d.	
(*a*) Excess of weekly charge on "out-county" patients		
(*b*) Excess of weekly charge on private patients		
Payments to other local authorities, specifying them :—		
	£ s. d.	
_____		
_____		
_____		
Other payments, specifying them :—		
	£ s. d.	
_____		
_____		
_____		
Total expenditure		. . .
Balance in hand at the end of the year, viz. :—		
_____		
_____		
Total of expenditure and balances . . £		

[1] As to Lancashire, see Order of Local Government Board, 24th March 1893.
[2] This item should agree with the corresponding entry in the farming and gardening account (Part III. of this Statement).
[3] See note 2 on p. 1071.
[4] This item should include all the sums entered as paid in the farming and gardening account (Part III. of this Statement).

PART II.—BUILDING AND REPAIRS FUND ACCOUNT.

Receipts.	Moneys raised by Means of Loans.		Other Moneys.		Expenditure.	Out of Moneys raised by Means of Loans.		Out of Other Moneys.	
	£ s. d.	£ s. d.	£ s. d.	£ s. d.		£ s. d.	£ s. d.	£ s. d.	£ s. d.
Balance in hand at the commencement of the year	. . .		. . .		Balance due at the commencement of the year	. . .		. . .	
Sums received from the treasurer of the county on account of—					Sums paid on account of—				
Ordinary repairs					Ordinary repairs				
Additions, alterations, and improvements (under £400) . .					Additions, alterations, and improvements (under £400) . .				
New buildings and extraordinary outlay (voted by county council)					New buildings and extraordinary outlay (voted by county council)				
From other local authorities, specifying them :—					Payments to other local authorities, specifying them :—				
_____ £ s. d.					_____ £ s. d.				
_____					_____				
_____					_____				
Other receipts, specifying them :—					Other payments, specifying them :—				
_____					_____				
_____					_____				
_____					_____				
_____					_____				
Transfers from the maintenance account, namely :—									
(*a*) Excess of weekly charge on "out-county" patients . .	. . .	. . .							
(*b*) Excess of weekly charge on private patients . . .	. . .	. . .							
Total receipts . . .	.		. . .		Total expenditure . . .			. . .	
Balance due at the end of the year . .	.		. . .		Balances in hand at the end of the year .			. . .	
Totals of receipts and balances	.		. . .		Totals of expenditure and balances	.		. . .	

SUMMARY OF RECEIPTS IN PARTS I. AND II.

RECEIPTS:	£ s. d.	£ s. d.
Maintenance account	. .	
Building and repairs fund account :—		
Moneys raised by means of loans .		
Other moneys		
Total		
Less transfers from the maintenance account to the building and repairs fund account . .		
Total receipts . . . . £		

SUMMARY OF EXPENDITURE IN PARTS I. AND II.

EXPENDITURE :—	£ s. d.	£ s. d.
Maintenance account	. .	
Building and repairs fund account :—		
Out of moneys raised by means of loans		
Out of other moneys		
Total		
Less transfers from the maintenance account to the building and repairs fund account . . .		
Total expenditure . . . . £		

PART III.—FARMING AND GARDENING ACCOUNT.

Receipts.	£ s. d.	£ s. d.	Expenditure.	£ s. d.	£ s. d.
Sums received during the year from sales[1]	. .		Value of stock at the commencement of the year	. .	
Value of goods supplied to the asylum during the year, viz. :—			Sums paid during the year in respect of—		
Beef, mutton, pork, etc. .			Labour (not that of patients) . .		
Poultry and eggs . .			Provender		
Milk, butter, and cheese .			Seeds and manures		
Potatoes and other vegetables			Stock, live and dead (bought) .		
Other items, viz. :—			Other payments, specifying them :—		
_____			_____		
_____			_____		
_____			_____		
Other receipts, specifying them :—[2]			_____		
_____			Total expenditure		
_____			Balance (if any) in favour of farm and garden . .		
_____			Total . . . . . £		
_____					
Total receipts					
Value of stock at the end of the year . . .					
Balance (if any) against farm and garden . . .					
Total . . . . . £					

_____ Clerk of Asylum.

_____ day of _____ 189__.

	£	s.	d.
Total expenditure as shown in summary of Parts I. and II.			
Amount disallowed at audit .			
Amount allowed at audit . .			

I hereby certify that I have compared the entries in this Financial Statement with the vouchers and other documents relating thereto, and that the regulations with respect to such Statement have been duly complied with.

I hereby further certify that I have ascertained by audit the correctness of such statement, and that the expenditure of the Visiting Committee during the year ended the 31st day of March 189 , included in such statement, and allowed by me at the audit, is[3] _____

As witness my hand this _____ day of _____ 189__.

_____

Stamp.

_____ District Auditor.

[1] See note 2 on p. 1066.

[2] The items included under this heading, if cash receipts, should also be entered under the heading "Other receipts," in the Maintenance Account (Part I. of this Statement).

[3] Amount to be inserted in words at length.

FORM B.

Lunatic Asylum belonging to the councils of the under-mentioned count [and borough], viz. :—
The administrative count of [and the borough of] .

Financial Statement.

The District Auditors Act 1879 (42 Vict. c. 6), the Local Government Act 1888 (51 & 52 Vict. c. 41), and the Lunacy Act 1891 (54 & 55 Vict. c. 65).

STATEMENT OF THE RECEIPTS AND EXPENDITURE of the Visiting Committee of the above-mentioned Lunatic Asylum during the year ended the 31st March 189 .

PART I.—MAINTENANCE ACCOUNT.

RECEIPTS.	£ s. d.	£ s. d.
Balance in hand at the commencement of the year .	. . .	
Goods sold, namely :—	£ s. d.	
Farm and garden sales[1]		
Kitchen stuff and old stores		
Sundries		
Sums received on account of the maintenance of—		
(*a*) Pauper patients :—	£ s. d.	
From guardians of unions and parishes within the contributory counties and boroughs at s. d. per head per week		
From guardians of other unions and parishes at s. d. per head per week		
From the treasurers of counties and boroughs for patients adjudged chargeable thereto, namely :—		
Of the contributory counties and boroughs at s. d. per head per week		
Of the non-contributory counties and boroughs at s. d. per head per week		
From the treasurers of the contributory counties and boroughs under sec. 269, subs. (9) of the Lunacy Act 1890, in respect of accommodation at other asylums, not exceeding one-fourth of the entire weekly charge . . .		
From the treasurers of non-contributory boroughs and of counties in respect of non-contributory boroughs for excess		

EXPENDITURE.	£ s. d.	£ s. d.
Balance due at the commencement of the year . .	. . .	
Salaries and wages (not including payments for labour appearing in the farming and gardening account, nor comprised in the building and repairs fund account) namely :—		
	£ s. d.	
Officers		
Attendants and others		
Provisions (including malt liquor in ordinary diet) . .		
Malt liquor, wine, and spirits (not included in ordinary diet		
Farm and garden expenses[3]		
Clothing—		
	£ s. d.	
For patients		
For attendants		
Necessaries (including fuel, lighting, and washing) . .		
Surgery and dispensary		
Furniture and bedding		

From the treasurers of other asylums for patients received under contract or arrangement at s. d. per head per week			Payments to treasurers of other asylums for patients under contract or arrangement		
Other receipts, if any, viz. :—			Transfers to the building and repairs fund account, namely :—		
				£ s. d.	
			(*a*) Excess of weekly charge on "out-county" patients		
			(*b*) Excess of weekly charge on private patients		
(*b*) Private patients			Payments to other local authorities, specifying them :—		
(*c*) Criminal patients :—	£ s. d.			£ s. d.	
From parliamentary vote					
From private funds of patients or their friends					
Funeral and removal expenses :—					
From guardians of unions and parishes					
From treasurers of counties and boroughs					
Other receipts, specifying them :—[2]			Other payments, specifying them :—		
	£ s. d.			£ s. d.	
Total receipts			Total Expenditure		
Balance due at the end of the year, viz. :—			Balance in hand at the end of the year, viz. :—		
Total of receipts and balances		£	Total of expenditure and balances		£

[1] This item should agree with the corresponding entry in the farming and gardening account (Part III. of this Statement).
[2] See note 2 on p. 1077.
[3] This item should include all the sums entered as paid in the farming and gardening account (Part III. of this Statement).

PART II.—BUILDING AND REPAIRS FUND ACCOUNT.

Receipts.	Moneys raised by means of Loans.		Other Moneys.		Expenditure.	Out of Moneys raised by means of Loans.		Out of other Moneys.	
	£ s. d.	£ s. d.	£ s. d.	£ s. d.		£ s. d.	£ s. d.	£ s. d.	£ s. d.
Balance in hand at the commencement of the year	. . .		. . .		Balance due at the commencement of the year				
Sums received from the treasurers of the contributory counties and boroughs, viz. :—					Sums paid on account of—				
					Ordinary repairs				
					Additions, alterations and improvements (under £400) . . .				
					New buildings and extraordinary outlay				
					Payments to other local authorities, specifying them :—				
					£ s. d.				
					Other payments, specifying them :—				
Transfers from the maintenance account, namely :—									
(*a*) Excess of weekly charge on "out-county" patients . . .	. . .	. . .							
(*b*) Excess of weekly charge on private patients	. . .	. . .							
Total receipts			. . .		Total expenditure . . .			. . .	
Balance due at the end of the year . . .			. . .		Balances in hand at the end of the year . .			. . .	

Name of county or borough.	On account of. Ordinary repairs.	Additions, alterations, and improvements (under £400).	New buildings and extraordinary outlay.	
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Totals .				

From other local authorities, specifying them :—

	£ s. d.

Other receipts, specifying them :—

SUMMARY OF RECEIPTS IN PARTS I. AND II.

RECEIPTS:	£ s. d.	£ s. d.
Maintenance account . . .	. .	
Building and repairs fund account:—		
Moneys raised by means of loans .		
Other moneys		
Total		
Less transfers from the maintenance account to the building and repairs fund account . . .		
Total receipts . . . . £		

SUMMARY OF EXPENDITURE IN PARTS I. AND II.

EXPENDITURE:—	£ s. d.	£ s. d.
Maintenance account . . .	. .	
Building and repairs fund account:—		
Out of moneys raised by means of loans		
Out of other moneys . . .		
Total		
Less transfers from the maintenance account to the building and repairs fund account . . .		
Total expenditure . . . £		

PART III.—FARMING AND GARDENING ACCOUNT.

Receipts.	£ s. d.	£ s. d.	Expenditure.	£ s. d.	£ s. d.
Sums received during the year from sales [1]			Value of stock at the commencement of the year		
Value of goods supplied to the asylums during the year, viz.—			Sums paid during the year in respect of—		
Beef, mutton, pork, etc.			Labour (not that of patients)		
Poultry and eggs			Provender		
Milk, butter, and cheese			Seeds and manures		
Potatoes and other vegetables			Stock, live and dead (bought)		
Other items, viz.—					
Other receipts, specifying them:— [2]			Other payments, specifying them:—		
Total receipts			Total expenditure		
Value of stock at the end of the year					
Balance (if any) against farm and garden			Balance (if any) in favour of farm and garden		
Total £			Total £		

_____ Clerk of Asylum.

_____ day of _____ 189 ___.

	£	s.	d.
Total expenditure as shown in summary of Parts I. and II.			
Amount disallowed at audit . .			
Amount allowed at audit . . .			

I hereby certify that I have compared the entries in this Financial Statement with the vouchers and other documents relating thereto, and that the regulations with respect to such Statement have been duly complied with.

I hereby further certify that I have ascertained by audit the correctness of such Statement, and that the expenditure of the Visiting Committee during the year ended the 31st day of March 189 , included in such Statement, and allowed by me at the audit, is [3] _____

As witness my hand this _____ day of _____ 189_.

_____ Stamp. _____ District Auditor.

Given under the Seal of Office of the Local Government Board, this fifteenth day of September, in the year one thousand eight hundred and ninety-two.

L.S.

HENRY H. FOWLER,
President.

S. B. PROVIS,
Assistant Secretary.

[1] See note 1 on p. 1073.

[2] The items included under this heading, if cash receipts, should also be entered under the heading "Other receipts," in the Maintenance Account (Part I. of this Statement).

[3] Amount to be inserted in words at length.

s. 7, subs. (2) of Criminal Lunatics Act 1884.

ORDER OF A JUSTICE FOR CONTINUED DETENTION IN ASYLUM AS A PAUPER LUNATIC, OF A PERSON ABOUT TO CEASE TO BE A CRIMINAL LUNATIC.

Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64), sec. 7, subs. (2).

(*a*) Registered No. of Criminal Lunatic .	(*a*) _____
(*b*) Name . . .	(*b*) _____
(*c*) Court . . .	(*c*) _____
*(*d*) Date of conviction .	(*d*) _____
*(*e*) Offence of which convicted . . .	(*e*) _____
*(*f*) Sentence . . .	(*f*) _____
(*g*) Asylum in which lunatic is detained at the date of this order . . .	(*g*) _____
(*h*) Date of warrant of removal to the said asylum . . .	(*h*) _____
(*i*) Date of notice of insanity . . .	(*i*) _____

(*d*) If necessary, add, "the jury returning a special verdict in pursuance of the Trial of Lunatics Act 1883."

Order of a Justice for continued Detention in Asylum as a Pauper Lunatic, of a Person about to cease to be a Criminal Lunatic.

Whereas the lunatic above described is now detained in the above-mentioned asylum as a criminal lunatic.

And whereas notice of insanity, as prescribed by sec. 7 of the above-mentioned Act, has been given to me by the superintendent of the said asylum, viz. to the effect—

Strike out paragraph (*a*) or paragraph (*b*), whichever is inappropriate.

(*a*) That the said criminal lunatic is about to be absolutely discharged; *or*,

(*b*) That the term of penal servitude [*or* imprisonment] to which the said criminal lunatic is subject is about to determine,

And that, in the opinion of the said superintendent, the said criminal lunatic is insane and unfit to be at large.

And whereas, after having examined him, and made such inquiry as I deemed necessary, I am satisfied that he is insane, and a proper person to be detained under care and treatment.

And whereas, having inquired into the facts, and having regard to the 8th sec.

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* In the case of an *un*convicted criminal lunatic—

For (*d*) substitute, as the circumstances may require—

Date of remand; *or*

Date of commitment for trial; *or*

Date when, on arraignment, prisoner was found to be then insane by a jury specially empanelled for the purpose; *or*

Date of trial when prisoner appeared to the jury charged with indictment to be then insane; *or*

Date when prisoner was brought up before Court to be discharged for want of prosecution and found to be then insane by jury empanelled for the purpose.

(*e*) substitute, Offence charged.

(*f*) to be omitted.

of the Criminal Lunatics Act 1884, I am of opinion that, for the purposes of the said Act, the said lunatic is *primâ facie* chargeable to the union or parish of , being—

(*a*) The union or parish in which it appears to me that his ordinary residence was situate at the time when the offence in respect of which he became a criminal lunatic was alleged to have been committed ; *or*,

(*b*) The union or parish in which it appears to me that the said offence was alleged to have been committed ; *or*,

(*c*) The union or parish in which it appears to me that the said criminal lunatic was first apprehended for such offence ; *or*,

(*d*) The union or parish in which it appears to me that the said criminal lunatic first landed in the United Kingdom ; *or*,

(*e*) The union or parish to which the said criminal lunatic appears to me, from statements made in the declaration made on his entry into the naval service of Her Majesty, or in his attestation paper on enlistment, or from other available information, to be by law chargeable for the purposes of the Acts relating to the relief of the poor.

Strike out all these paragraphs—(*a*), (*b*), (*c*), (*d*), (*e*)—except the one which is appropriate.

I hereby, in pursuance of the above-mentioned Act, order the said lunatic to be detained in the aforesaid asylum as a lunatic.

This order shall take effect as from the date when the said criminal lunatic is absolutely discharged, or when the said term of penal servitude or imprisonment determines. If, however, within one month after the date of the aforesaid notice, the said lunatic is not absolutely discharged, or the said term of penal servitude or imprisonment has not determined, this order shall be of no effect.

Subjoined is a statement of the names and addresses of some of the relatives of the lunatic.

Justice of the Peace

for

day of 18

To the Superintendent of

Asylum.

The names and addresses of some of the relatives of the lunatic are as follow:

Name.	Address.

D

ADDENDA.

At p. 11 add to note 1, *Barrow* v. *Barrow*, 1774, Dick. 504.

At p. 14 add to note 4, *Gartside* v. *Isherwood*, 1783, 1 Br. C.C. App. 560, 561, and *Bath and Montague's case*, 1693, 3 Ch. Cas. 103.

At p. 29 add to note 4, *Yarrow* v. *Yarrow*, 1892, Prob. 92, a case in which the point involved in *Hanbury* v. *Hanbury* was raised, but not decided.

At p. 46 add to note 2, *Allen* v. *Macpherson*, 1845, 1 H.L.C. 191 ; *Baker* v. *Batt*, 1838, 2 Moo. P.C. 317 ; *Bulkeley* v. *Wilford*, 1834, 8 Bli. N.R. 111 ; *Green* v. *Skipworth*, 1809, 1 Phill. E.R. 53 ; *Hacker* v. *Newborn*, 1654, Style R. 427 ; *Lamkin* v. *Babb*, 1752, 1 Lee 1 ; *Nelson* v. *Oldfield*, 1688, 2 Vern. 76 ; *Popham* v. *Brooke*, 1828, 5 Russ. 8 ; *Raworth* v. *Marriott*, 1833, 1 M. & K. 643 ; *Wright* v. *Vanderplank*, 1855, 2 K. & J. 1.

At pp. 95 and 641 add to *Reg.* v. *Hatfield Peverel*, *Reg.* v. *Smith*, 1879, 5 Q.B.D. 96.

At p. 267, note 4, add to *Vane* v. *Vane*, *re Bruin's Trusts*, 1888, W.N. 1888, 103.

At p. 368 add to note 8, *Beer* v. *Ward*, 1821, Jac. 194 ; *re Barry*, 1828, 1 Moll. 414.

At p. 408 add to note 1, *Leaf* v. *Coles*, 1851, 1852, 1 De G. M. & G. 171, 417, and consult S. C. also as to winding up of partnership, order for sale being dispensed with. Add also *Whitwell* v. *Arthur*, 1865, 35 Beav. 140 (evidence that insanity is incurable necessary to justify dissolution).

At p. 422 add to note 1, *Norris* v. *Stuart*, 1853, 16 Beav. 359.

At p. 430, note 4, and p. 1017, *re Stoer*, add *re Gordon*, 1875, L.R. 10, Ch. 192.

At p. 450 add to note 11, *re Smeaton's will*, 1870, L.R. 13 Eq. 169. As to land in Ireland vested in lunatic trustee, see *re Lamotte*, 1876, 4 Ch.D. 325.

At p. 990 add to note 10 (*re Stewart*), *re Chauncey*, 1866, 14 W.R. 849. As to fund in Court, see *re Tate*, 1882, 20 Ch.D. 187 ; *re Armfield*, 1889, W.N. 1889, 208 ; *Farebrother* v. *Welchman*, 1855, 3 Drew. 122.

At p. 991 add to note 9, *re Dodsworth's Trust*, 1852, 10 Ha. 16 ; *Magnus* v. *Bingley*, 1853, 2 W.R. 130.

At p. 1015 add to note 8, *Hollingworth* v. *Sidebottom*, 1839, 8 Sim. 620 (a lunatic may be defendant to an action for partition). As to form of order, see *re Molyneux*, 1862, 10 W.R. 512.

MISCELLANEOUS.

Costs.—As to liability for costs of unfounded opposition to presence of next of kin, see *re Booth*, 1850, 15 L.T. 429. Extra costs occasioned by a committee's error may be allowed to a creditor proving his debt against the estate (*re Buckle*, 1830, 1 Russ. & M. 360). As to evidence of debts, see *re Iredale*, 1849, 1 H. & T. 254. As to form of order for maintenance of a lunatic where a judgment creditor has obtained execution, see *re Winkle*, 1894, 2 Ch., at p. 523. When an action is necessary for a vesting order no costs will be granted on either side (*Cresswell* v. *Haines*, 1862, 8 Jur., N.S., 208).

Death of Lunatic.—The Court has refused, after the death of a lunatic, to carry into effect an order not executed in strict compliance with an order obtained in his lifetime (*re Loft*, 1844, 8 Jur. 206, and see *ante* p. 368, and cp. *re Singleton*, 1858, 8 Ir. Ch. 263, and *re Kingston*, 1839, 2 Ir. Eq. Rep. 169). Where on the death of a lunatic the committee interferes, the Court may make an order to let the heir into possession. Query, however, whether this course will be followed in the case of interference by the solicitor of the late committee (*Carrow* v. *Ferrior*, 1868, 18 L.T., N.S., 806). The mere fact that an estate to which there are rival claimants has been in lunacy is no ground for the appointment of a receiver *pendente lite* (*ib.* 807). After probate or administration has been taken out, the executors or administrators of a deceased lunatic may obtain payment and delivery over of any fund in Court belonging to the deceased lunatic, provision

being made for the costs of the committee and the next of kin (*re Perry*, 1828, Shelf. Lun. 288; *re Hahn*, 1829, *ib.*; *re Jodrell*, 1832, *ib.*; *re Garden*, 1844, 13 L.J., N.S., Ch. 439).

The committee has no special lien on a lunatic's land after his death (*Jones* v. *Noyes*, 1858, 28 L.J., N.S., Ch. 47).

An order is required for access to documents deposited in the Lunacy Office (*ante* p. 987), not only during the life (*re Sartoris*, 1864, 1 N.R. 4), but after the death (*re Silcock*, 1862, 1 N.R. 4), of the lunatic. After the death of a lunatic, counsel's briefs and shorthand notes of proceedings have been ordered to be produced (*Tyas* v. *Brown*, 1880, 28 W.R. 575). The will of a deceased lunatic has been ordered to be opened with a view to arrangements being made for his funeral (*re Farrar*, 1838, 2 Jur. 462).

As to payment of costs of committee by trustee on death of lunatic, see *Toledo* v. *Vieta*, 1843, 7 Jur. 336.

Dividends (application of).—Direction may be given for annual application in Chambers showing then state of mind and property of lunatic (*re Sturge's Trusts*, 1859, 5 Jur., N.S., 423).

Executor and Administrator.—By our law, as by civil law, lunatics are incapable of being executors or administrators, since they can neither discharge the duties incident to these offices nor indicate whether they will or will not undertake them.[1] Where therefore an executor or administrator becomes *non compos* the Court will grant the administration to another.[2] Where a sole executor or administrator becomes lunatic, the Court grants administration to the committee of the estate (if he is so found),[3] the receiver and manager of his estate, if the case comes under sec. 116 of the Act of 1890 *ante*,[4] or the person authorised by order of Court to apply for administration in his behalf,[5] or if there is no committee a residuary legatee or one of the next of kin.[6] By the consent, express or implied, of the committee of a lunatic, administration with the will annexed may be granted to a residuary legatee during the lunacy of the executor (*re Scarlett*, 1872, 27 L.T., N.S., 215; in the *goods of Milnes*, 1826, 3 Add. 55; in the *goods of Ponsonby*, 1895, Prob. 287; in the *goods of Cooke*, 1895, Prob. 68). Where the committee renounces, administration may be committed to a stranger approved of by the Master and the next of kin (in the *goods of Hastings*, 1877, 4 P.D. 73). Administration *de bonis non* has been granted to one of the next of kin for the use of the other next of kin who was imbecile without citing the next of kin of the latter (in the *goods of Southmead*, 1842, 3 Curt. 28). Where one or several executors or administrators who have taken a joint grant becomes lunatic the Court will call in and revoke such grant, and issue a grant *de novo* to the same executors or administrators (in the *goods of Marshall*, 1836, 1 Curt. 297; in the *goods of Newton*, 1843, 3 Curt. 428). The wife of a lunatic if appointed co-executrix will not be restrained from taking out probate though she may be from intermeddling with the property (*Yetts* v. *Palmer*, 1863, 8 L.T., N.S., 528; in the *goods of Connors*, 1879, 3 L.R. Ir. 283).

For form of account against a lunatic executor and his committees, see Seton, 5th ed., p. 1275.

Where a testator while of unsound mind made a will disposing of large sums of

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[1] Cp. Williams, Executors, i. 188 (9th ed.)

[2] *Hills* v. *Mills*, 3 Wm. & M., 1 Salk. 36; *Evans* v. *Tyler*, 1849, 2 Robert. 128; *Binfield*, 1754, 1 Lee 625; *Offley* v. *Best*, 18 Car. II., 1 Sid. 370.

[3] In the *goods of Phillips*, 1824, 2 Add. 336.

[4] *Re Slumbers*, 1865, 34 L.J., N.S., P. & D. 93.

[5] *Re Plimsaul*, 1895, *cit.* Tristram and Coote's Prob. Prac., 12th ed., p. 205, *q.v.* in regard to this whole subject.

[6] The Court has in such cases to be satisfied on affidavit of the facts of lunacy, and that no inquisition has been had or committee appointed, and sureties in double the amount of the property are required, and such sureties must have justified. Cp. *ex parte Evelyn*, 1833, 2 M. & K. 3; in the *goods of Crump*, 1810, 3 Phill. 497; in the *goods of Hardstone*, 1828, 1 Hagg, E. R. 487; in the *goods of Joseph*, 1838, 1 Curt. 907; in the *goods of Sharland*, 1871, 25 L.T., N.S., 574; in the *goods of Espinasse*, 1879, 3 L.R. Ir. 185; in the *goods of Penny*, 1846, 4 N. of C. 659; in the *goods of Henry Binckes*, 1836, 1 Curt. 286; in the *goods of Leese*, 1894, Prob. 160.

money, although at the time he was possessed of no property whatever, and was dependent upon his relations for support, administration was granted as in the case of an intestacy to the sister of the deceased as attorney for his widow, who was resident in Australia, the oath of the administratrix being to the effect that the deceased, so far as she knew and believed, had left no will (in the *goods of Rich*, 1892, Prob. 143). In the *goods of George Moore*, 1892, Prob. 145, where the next of kin was unable to find qualifying security, a grant was made to a receiver appointed by the Chancery Division.

Habeas corpus.—In case of dangerous lunatic the time for return to *habeas corpus* may be extended (*R.* v. *Clarke*, 1762, 3 Burr. 1362), and previous medical inspection ordered (*R.* v. *Kelly*, 1832, cit. Shelf. Lun. 515; *R.* v. *Turlington*, 1761, 2 Burr. 1115; *R.* v. *Wright*, 3 Geo. II. 2 Str. 915). The same course may be taken in the case of a lunatic's bail applying for *habeas corpus ad justificandum* (cp. *Pillop* v. *Sexton*, 1803, 3 Bos. & P. 550; *Anderson's bail*, 1815, 2 Chitty R. 104; *Cavenagh* v. *Collett*, 1821, 4 B. & Ald. 279; *Cock* v. *Bell*, 1811, 13 East 355).

Legacies.—Legacies payable to a person of unsound mind continue to be so payable till he is brought under the jurisdiction in lunacy.[1] Payment may, in order to avoid questions as to the validity of the discharge, be made by trustees[2] or debtors[3] into Court, where a bequest for a particular purpose is defeated by the lunacy of the legatee. The question whether the gift takes effect depends on whether, in spite of the particular mode of enjoyment prescribed, there was an absolute gift as between the testator and the legatee. See Theobald on Wills, 4th ed., pp. 396 and 405, and cases there cited.

The transfer under an order in lunacy of 2¾ per cent Consols into the name of the Paymaster-General out of the name of a testatrix who had become of unsound mind, has been held not to adeem a bequest by the testatrix of all 2¾ per cent Consols "standing in my name and belonging to me at the time of my decease" (*re Wood*, 1894, 2 Ch. 577).

Libel.—The responsibility of a lunatic for libel is governed by the general law a to insanity and tort, as to which see *ante* p. 64. The imputation of insanity i libellous (*Morgan* v. *Lingen*, 1863, 8 L.T. 800; *Weldon* v. *Winslow*, 1884, *Times*, March 14-19), but may be privileged (*Weldon* v. *De Bathe*, 1885, 33 W.R. 328).

Lien.—As to whether bankers have a general lien on securities of lunatic deposited with them, see *Leese* v. *Martin*, 1873, L.R. 17 Eq. 224.

Married Woman.—The Judge in Lunacy may make an order binding a married woman's beneficial interest and that of her heir after her death (*re Stables*, 1864, 4 De G. J. & S. 257). Security is not required where a wife's separate income is paid to her husband (*Nettleship* v. *Nettleship*, 1839, 10 Sim. 236).

Merchant Shipping Act 1894.—The power of the committee of a lunatic ship-owner or other person appointed by the Judge in Lunacy to act for the lunatic under the Merchant Shipping Act 1894 (57 & 58 Vict. c. 60), sec. 55, does not include a power of mortgaging or selling the ship. Cp. *Michael* v. *Fripp*, 1868, L.R. 7 Eq. 95 (infancy).

Presumptions (1) as to attestation (*ante* p. 58), see *Freshfield* v. *Reed*, 1842, 9 M. & W. 404; (2) as to continuance of insanity, see *Grimani* v. *Draper*, 1848, 6 N. of C. 421; *Johnson* v. *Blane*, 1848, *ib.* 457; *Fowlis* v. *Davidson*, 1848, *ib.* 473; and cp. *Ferguson* v. *Borrett*, 1859, 1 F. & F. 613 (evidence of mania); and *Filmer* v. *Gott*, 1774, 4 Bro. P.C. 230; *Tatham* v. *Wright*, 1833, 2 Russ. & M. 20 (conversations as evidence of testamentary incapacity).

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[1] *Winthrop* v. *Winthrop*, 1845, 1 Coop. *t.* C. 196. The law is the same with reference to other payments.

[2] *Re Upfull*, 1851, 3 Mac. & G. 281; cp. *Pothecary* v. *Pothecary*, 1848, 18 L.J., N.S., Ch. 48, where the Court refused to order trustees to pay interest on dividends which they had invested instead of paying them to an adult imbecile, or the costs of an application to have the fund transferred into Court.

[3] Cp. *Rock* v. *Slade*, 1838, 7 Dowl. 22; *Gliddon* v. *Treble*, 1860, 30 L.J., N.S., C.P. 160; *Hessing* v. *Sutherland*, 1856, 25 L.J., N.S., Ch. 687; *Hodgson* v. *Kent and Surrey Permanent Building Society*, 1888, W.N. 1888, 90; *Mackie* v. *Darling*, 1871, 19 W.R. 796.

Procedure.—The citation of a lunatic party has been dispensed with where his interest was sufficiently protected by parties already before the Court (*Ward* v. *Huckle*, 1887, 12 P.D. 110). Where the owner of a first estate of inheritance is a lunatic, the owner of the second estate is a proper party (*Singleton* v. *Hopkins*, 1855, 25 L.J. Ch. 50).

Property of lunatic (*ante* p. 414).—Speculative dealings with avoided (*ex parte Cathorpe*, 1785, 1 Cox 182; *ex parte Ellice*, 1821, Jac. 234; *ex parte Stonard*, 1810, 18 Ves. 285; *Norbury* v. *Norbury*, 1819, 4 Madd. 191).

Protection Order.—An order may be made on a husband under sec. 296 of Act of 1890 although wife has obtained a protection order. Cp. *Oxford Guardians* v. *Barton*, 1875, 39 J.P. 725.

Revenue.—As to liability of asylum to assessment to (*a*) inhabited house duty, see *Cawse* v. *Nottingham Lunatic Asylum*, 1891, 1 Q.B. 585; *Needham* v. *Bowers*, 1888, 21 Q.B.D. 436; (*b*) income tax, *St. Andrew's Hospital, Northampton* v. *Shearsmith*, 1887, 19 Q B.D. 624.

Security dispensed with in small cases (add to p. 351, note 8, *re Farrow*, 1829, 1 Russ. & M. 112; *re Collins*, 1842, 6 Jur. 544). Nominal security where committee restrained from receiving rents (*Radcliffe* v. *Carter*, 1837, C.P.C. 250).

Settlement of Pauper (*ante* p. 638).—Query whether examination of pauper as to, by two justices, admissible as evidence after pauper has become insane (*R.* v. *Eriswell*, 1779, 3 T.R. 707; and cp. *Jones* v. *Jones*, 1785, 1 Cox 184; *Murley* v. *Templeman*, 1825, Shelf. Lun. 621).

Speculative Dealings.—A committee is not allowed to purchase the lunatic's estate (*Downes* v. *Grazebrook*, 1817, 3 Mer. 200). As to sale of reversionary interest, see *Johnson* v. *Turner*, 1868, W.N. 1868, 305; *Walker* v. *Symons*, 1844, 8 Jur. 49.

Tenant.—Relief from forfeiture for breach of covenant has been given to the tenant of a lunatic where the committee brought an action for ejectment, on the principle that harsh proceedings would not be for the benefit of the estate (*ex parte Vaughan*, 1823, Turn. & R. 434). As to certificate of abatement, see *re West*, 1823, Turn. & Russ. 137 n.; and as to distress, *Grissell* v. *Robinson*, 1836, 3 Sc. 329.

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